### AGENDA

# STATE BUILDING CODE TECHNICAL REVIEW BOARD

Thursday, November 10, 2016 - 10:00 a.m.

Twin Hickory Area Library, 5001 Twin Hickory Road, Glen Allen, Virginia 23059-2509

- I. Roll Call (Tab 1)
- II. Approval of September 16, 2016 Minutes (Tab 2)
- III. Public Comment

v.

IV. Approval of Final Order (Tab 3)

In Re: Perry Smith
Appeal No. 16-3

Approval of Final Order (Tab 4)

In Re: Appeal of Christopher and Jillian Kiely

Appeal No. 16-1

VI. Approval of Final Order (Tab 5)

In Re: Appeal of Sabrina Anderson

Appeal No. 16-5

VII. Appeal Hearing (Tab 6)

In Re: Appeal of Robert Jones

Appeal No. 16-2

VIII. Interpretation Request (Tab 7)

City of Richmond Fire Department

IX. Secretary's Report

# STATE BUILDING CODE TECHNICAL REVIEW BOARD (Updated October 6, 2016)

# J. Robert Allen, CBO

#### Chairman

(Representing the Virginia Building & Code Officials Association)

# James R. Dawson Vice Chairman

(Representing the Virginia Fire Chiefs Association)

#### Matthew Arnold

(Representing the American Institute of Architects)

## W. Keith Brower, Jr.

(Representing the Commonwealth at large)

#### Vince Butler

(Representing the Virginia Homebuilders Association)

# J. Daniel Crigler

(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

# John H. Epperson, PE

(Representing the Virginia Society of Professional Engineers)

### Alan Givens

(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

## Joseph A. Kessler, III

(Representing the Associated General Contractors of Virginia)

## Eric Mays, PE, CBO

(Representing the Virginia Building & Code Officials Association)

# E. G. (Rudy) Middleton III

(Electrical Contractor)

## Joanne D. Monday

(Representing the Virginia Building Owners and Managers Association)

#### Patricia S. O'Bannon

(Representing the Commonwealth at Large)

# W. Shaun Pharr, Esq.

(Representing the Apartment and Office Building Association of Metropolitan Washington)

### Justin I. Bell, Esq., Board counsel

Assistant Attorney General
Financial Law and Government Support Section
Office of the Attorney General

# DRAFT MINUTES

# STATE BUILDING CODE TECHNICAL REVIEW BOARD MEETING

September 16, 2016

# RICHMOND, VIRGINIA

# Members Present

Mr. J. Robert Allen, Chairman

Mr. Matthew Arnold

Mr. W. Keith Brower

Mr. J. Daniel Crigler

Mr. James R. Dawson

Mr. John H. Epperson, PE

Mr. Joseph A. Kessler, III

Mr. Eric Mays

Ms. Joanne D. Monday

Ms. Patricia S. O'Bannon

# Members Absent

Mr. Vince Butler

Mr. Alan D. Givens

Mr. W. Shaun Pharr, Esq.

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at

approximately 10:00 a.m.

Roll Call

The attendance was established by the Secretary, Alan W. McMahan, Secretary, and constituted a quorum. Mr. Justin I. Bell, Assistant Attorney General in the Office of the Attorney General, was present

and serving as the Board's legal counsel.

Approval of Minutes

Ms. Monday moved to approve the revised minutes of the May 20, 2016 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Messrs. Brower, Dawson, Mays and Ms. O'Bannon abstaining. Subsequently, Mr. Epperson moved to approve the amended minutes of the July 15, 2016 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Mays and passed unanimously with Mr. Crigler, Mr. Kessler,

and Ms. Monday abstaining.

**Public Comment** 

The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the

public comment period.



State Building Code Technical Review Board September 16, 2016 Minutes - Page Two

# Final Orders

# Appeal of Bradley Pollack; Appeal No. 15-20:

After review and consideration, Mr. Dawson moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Brower and passed with Mr. Crigler, Mr. Kessler, and Ms. Monday abstaining.

# Appeal of Lien Tran & Anh Nguyen; Appeal No. 15-21:

After review and consideration, Mr. Epperson moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Ms. O'Bannon and passed with Mr. Crigler, Mr. Kessler, and Ms. Monday abstaining.

# Interpretations

An interpretation request from the City of Richmond Fire Marshal's Office was considered concerning lighter than air vehicle fuel systems in buildings. After discussion, Mr. Dawson moved that the Review Board decline to provide an interpretation because the request was unclear and because it did not ask for how the code is applied. The motion was seconded by Mr. Crigler and passed unanimously. No one was present from the Fire Marshal's Office to offer comment concerning the interpretation request.

# New Business

#### Appeal of Perry Smith; Appeal No. 16-3:

A preliminary hearing convened with the Chairman serving as the presiding officer. The appeal concerned an unfinished addition to a home at 353 Red Lane in the City of Salem, owner by Mr. Smith. The City of Salem's building official took Mr. Smith before the City's Board of Building Code Appeals (local appeals board) for a violation of § 18-38 of the Code of the City of Salem. The city's action followed the expiration of Mr. Smith's building permit which was issued in July of 2015. The local appeals board heard the case (without an appeal by Mr. Smith) and ruled to affirm the building official's decision and required Mr. Smith to obtain a demolition permit within 30 days and to complete demolition of the structure within 90 days. Mr. Smith then filed an appeal of the local appeal



# State Building Code Technical Review Board September 16, 2016 Minutes - Page Three

# Appeal of Perry Smith; Appeal No. 16-3 (cont'd.):

board's decision with the Review Board.

In processing the appeal, Review Board staff conducted an informal fact-finding conference with the Mr. Smith and the building official for the City of Salem. During the conference, Review Board staff provided the parties with a copy of a previous Review Board decision addressing issues similar to those in Mr. Smith's appeal. Review Board staff then compiled and organized the record in the appeal scheduled the preliminary hearing as a mechanism for the consideration of whether the issues were appealable.

The following person was sworn in and given the opportunity to present testimony:

Donald Hale, neighbor to Mr. Smith Perry Smith, property owner

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the preliminary hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

# Decision: Appeal of Perry Smith; Appeal No. 16-3:

After deliberation, Mr. Mays moved that the appeal is most due to lack of jurisdiction because the Mr. Smith's appeal is of a city ordinance and not the Virginia Construction Code (VCC). The motion



# State Building Code Technical Review Board September 16, 2016 Minutes - Page Four

# Decision: Appeal of Perry Smith; Appeal No. 16-3 (cont'd):

was seconded by Mr. Brower and passed unanimously.

# Appeal of Christopher & Jillian Kiely; Appeal No. 16-1:

Mr. Mays informed the Chairman of his recusal from the proceedings because he was the building official for the Town of Occoquan prior to the appeal, he had discussed the issue with the town's building official, and because the Prince William County Board of Building Code Appeals hears appeals of decisions made by the town's building official.

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned the refusal of the Town of Occoquan' building official to issue a plumbing permit under the VCC to the Kiely's for the removal of a sewer lateral on their property.

The following persons were sworn in and given the opportunity to present testimony:

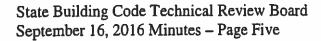
Christopher Kiely, property owner
Joseph Barbeau, representing the Town of Occoquan
Lance Houghton, adjacent property owner

# Also present were:

Martin Crim, Esq., counsel for the Town of Occoquan Jason Hickman, Esq., counsel for Lance Houghton

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open



# Appeal of Christopher & Jillian Kiely; Appeal No. 16-1 (cont'd.):

session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

# <u>Decision: Appeal of Christopher & Jillian Kiely; Appeal No. 16-1:</u>

After deliberation, Mr. Dawson moved to uphold the building official's and the local appeal board's decision to deny the plumbing permit because its approval would have created a violation of Section 110.1 of the Virginia Construction Code (VCC). The motion was seconded by Brower and the motion failed; Mr. Mays was not present. Ms. O'Bannon then moved to overturn the building official's decision to not issue the plumbing permit and the local appeal board's decision to uphold that decision.

The motion further directed the building official to grant the plumbing permit to the Kielys for the removal of the sewer lateral. The motion was seconded by Ms. Monday and passed with Messrs. Dawson and Brower voting in opposition; Mr. Mays was not present. Subsequently, Mr. Kessler moved to amend Ms. O'Bannon motion to require the plumbing permit be issued within thirty days. The motion was not seconded; therefore, the motion failed.

## Appeal of Sabrina Anderson; Appeal No. 16-5:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned the City of Fredericksburg building official's acceptance of an engineered product offered by a homebuilder to correct foundation cracks and settlement in a home it constructed.

The following persons were sworn in and given the opportunity to present testimony:

Sabrina Anderson, property owner Jeffrey Bragg, for the City of Fredericksburg State Building Code Technical Review Board September 16, 2016 Minutes - Page Six

# Appeal of Sabrina Anderson; Appeal No. 16-5 (cont'd.):

Adam Hassermann, with Bryton Homes Eric Turner, with Ms. Anderson Graham Weigle, with Bryton Homes

# Also present were:

Ken Hardt, Esq., counsel for Bryton Homes Ted Brenner, Esq., counsel for Smith Run Development Joel Morgan, Esq., counsel for Smith Run Development

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

# Decision: Appeal of Sabrina Anderson; Appeal No. 16-5:

After deliberation, Mr. Mays moved to overturn the building official's decision and the decision of the local appeal board to accept the use of carbon fiber reinforced polymer bands on Anderson's foundation, recognizing the need for additional soil testing under the home's footings, as recommended in the report submitted by ECS, a geotechnical engineering company. The motion was seconded by Mr. Arnold and passed unanimously.

Secretary's Report

The Chairman notified the Review Board members of Mr. Epperson's resignation from the Review Board effective December 31, 2016. Mr. Bell updated the Review Board members on pending circuit court



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	appeals of past decisions. Mr. McMahan informed the Review Board members that next scheduled meeting would be in November of 2016.
Adjournment	There being no further business, the meeting was adjourned by motion of Mr. Mays at approximately 3:35 p.m.
Approved:	<u>-</u>
	Chairman, State Building Code Technical Review Board
	Secretary, State Building Code Technical Review Board

Virginia:

#### BEFORE THE

STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Perry Smith Appeal No. 16-3

Hearing Date: September 16, 2016

#### DECISION OF THE REVIEW BOARD

# I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

### II. CASE HISTORY

In July of 2015, the City of Salem's Department of Engineering and Inspections (City code office), the authority responsible for the enforcement of Part I (the Virginia Construction Code, or VCC) of the Virginia Uniform Statewide Building Code, issued a building permit under the 2012 VCC to Perry Smith (Smith) for the completion of a two-story addition onto his home at 353 Red Lane. The permit required the addition be completed within six months of the permit's issuance date.

Afterwards, the City code office reminded Smith of his need to obtain the required inspections and to provide a registered design professional's evaluation of the structural soundness of the addition's masonry walls.

In late January of 2016, the City code office notified

Smith that his permit had expired and, as result, the city

planned on taking his project to the City of Salem's Board of

Building Appeals¹ (local appeals board).

Subsequently, the City code office scheduled a hearing with the local appeals board in March of 2016 concerning the unfinished addition. The city notified Smith of the hearing by regular mail, certified mail, by posting a notice on the exterior of his home, and by publishing a legal notice of the local newspaper.

The local appeals board held a hearing in March of 2016

<sup>1</sup> Smith never filed an appeal to the local appeals board on this matter.

against Smith for violations of §18-38(1) (b) (1), (4), and (5) of the Code of the City of Salem, ultimately ruling that Smith had 30 days to secure a demolition permit, then an extra 90 days from that date to complete the demolition of the addition.

After receiving the local board's decision, Smith further appealed to the Review Board.

Review Board staff, in processing Smith's appeal, informed the parties that in prior cases concerning jurisdiction, the Review Board had determined that it lacked jurisdiction to hear appeals of the application of local ordinances or regulations.

Consequently, a hearing was held before the Review Board with Smith as the only party in attendance.

# FINDINGS OF THE REVIEW BOARD

Although Smith filed an appeal to the Review Board requesting additional time to complete his addition, the Review Board finds that the only issues properly before is whether it can hear an appeal of a local appeals board decision that soley based on a local ordinance (i.e. a local city code or regulation).

On this matter, the Review Board finds that no evidence or documentation was submitted by the parties to indicate that the City code office had cited Smith for any violations of the VCC. Moreover, the local appeals board did not reference or cite any VCC violations in its decision concerning Smith's project. The Review Board finds that its basic law, § 36-114 of the Code of Virginia, does not authorize it to hear appeals of local ordinances:

"The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required."

Additionally, the Review Board finds that it lacks proper jurisdiction to hear a further appeal from the decision of the local appeals board predicated on a city ordinance. Moreover, it finds that Smith's remedy on this matter is limited to an appeal of the city ordinance to the local appeals board.

# FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the appeal of Smith, to be, and hereby is, dismissed due to lack of jurisdiction.

Chairman, State Technical Review Board

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

Virginia:

## BEFORE THE

STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Christopher & Jillian Kiely

Appeal No. 16-1

Hearing Date: September 16, 2016

DECISION OF THE REVIEW BOARD

#### PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

# II. CASE HISTORY

In December of 2015, Christopher and Jillian Kiely (Kielys) applied for a plumbing permit with the Town of Occoquan

(Occoquan) to cap an existing sanitary sewer lateral on their property at 430 Mill Street over concerns that it was cracked and leaking sewage. The lateral originates offsite and crosses their property to serves structures on two other properties, 440 Mill Street and 450 Mill Street. The lateral does not service the Kiely's property.

In January of 2016, Occoquan's building official (local code official), the authority responsible for the enforcement of Part I (the Virginia Construction Code, or VCC) and III (the Virginia Maintenance Code, or VMC) of the Virginia Uniform Statewide Building Code, denied the Kiely's permit application, referencing VCC Section 102.1 (Purpose), VMC Section 506.1 (Sanitary Drainage Systems), and § 36-99 of the Code of Virginia, the portion of state law concerning the VCC.

Consequently, the Kielys filed an appeal of the local code official's decision to the Prince William County Board of Building Code Appeals (local appeals board) which, through an agreement with Occoquan, hears appeals of decisions made by the local code official. The local appeals board held the appeal in February of 2016 and upheld the decision of the local code official.

The Kielys then further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference in May of 2016, attended by the Kielys; Mr. Anolik (owner of 440 Mill Street) and his advisor; Mr. Houghton (owner of 440 Mill Street) and his counsel; and Mr. Crim, Occoquan's town attorney.

The Kielys further appealed to the Review Board and a hearing was held in September of 2016.

During the hearing, the Kielys testified that the sewer lateral needs to be cut and capped because it is leaking, and since it crosses their property without any recorded easements, they are within their rights to do it. The town contended that if it issued the permit and allowed the Kielys to cap the lateral, the action would result in the creation of unsafe conditions at 440 and 450 Mill Street, therefore rendering buildings on the two properties uninhabitable due to the lack of a functioning sanitary sewer discharge. The Kielys argued that not issuing to permit to cap the lateral the town would be sustaining an existing unsafe condition on their property due to the leak. Both sides were uncertain about whether there are other easements on the property, noting that the easement issue is pending in court. The parties, however, disagreed about whether there is a leak in the existing lateral.

#### III. FINDINGS OF THE REVIEW BOARD

The Review Board finds that there is nothing in the VCC or the VMC which prohibits a property owner from capping or removing a sewer lateral on their private property, unless doing so would violate the provisions of the VCC or other laws and ordinances. Moreover, the Review Board finds that there is nothing in the VCC or VMC which prevents the local code official from issuing the Kielys a plumbing permit to cap or remove the sewer lateral running across their property, despite the fact that such action would effectively deprive the individual owners of 440 and 450 Mill Street access to a sanitary sewer discharge.

Additionally, VCC Section 110.1 (Permits) addresses when a building official can refuse to issue a permit. It states, in pertinent part:

"[...] If the applications or amendments do not comply with the provisions of this code or all pertinent laws and ordinances, the permit shall not be issued and the permit applicant shall be notified in writing of the reasons for not issuing the permit.[...]"

The Review Board finds that had the local code official been able to produce evidence of an sewer easement across the Kiely's property, he could have used the above code section as a reason to reject the Kiely's permit application, because the capping would have potentially violated the legal requirements of the easement; however, no such documentation was provided.

Given the above reasons, the Review Board finds that barring non-compliance with any other provisions of the VCC or other pertinent law and ordinances, the Kielys should be granted a plumbing permit for the proposed work.

# IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the Town of Occoquan building official and the local appeals board to be, and hereby is, overturned.

Chairman, State Technical Review Board

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

Virginia:

### BEFORE THE

STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Sabrina Anderson

Appeal No. 16-5

Hearing Date: September 16, 2016

DECISION OF THE REVIEW BOARD

### I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

#### II. CASE HISTORY

In early 2013, the City of Fredericksburg Building Services

Department (City code office), the agency responsible for the

enforcement of Part I of the 2009 Virginia Uniform Statewide
Building Code (the Virginia Construction Code, or VCC) issued
building permit to Bryton Homes LLC (Bryton), a licensed Class A
contractor, to build a single-family dwelling on its property at
1012 Jami's Place in Fredericksburg.

In May of 2013, the City code office issued a Certificate of Occupancy for the dwelling and it was subsequently sold to Sabrina Anderson (Anderson).

In June of 2014, Anderson asked the City code office to inspect her home over concerns about potential VCC violations. As a result of the inspection, the city code office issued an Order to Correct (Order) to Bryton for several VCC violations regarding the home's structural framing, plumbing, HVAC and electrical systems.

Subsequently, the City code office issued a Directive to Bryton to evaluate the dwelling's floor system (i.e. structural framing) as it relates to the violations cited in the aforementioned Order.

In July of 2014, Anderson hired an engineering firm,

Alexcom & Associates, Inc. (Alexcom), to perform a shrink/swell

soil investigation of her property out of concern for the type

of fill and soil used on the property as it relates to various

settlement issues, including cracks in the home's foundation

walls.

In December of 2014, Bryton hired an engineering firm, ECS Mid-Atlantic, LLC (ECS), who conducted an independent soil investigation of the property and agreed with Alexcom that some soils on the property have a high potential shrink/swell potential; however ECS concluded the cracks in the building's foundation were due to settlement.

In May of 2015, the City code office issued Bryton Homes a Directive to provide an engineer's plan to remediate the issues associated with the "[...] problematic soils [...]" on the property.

In August of 2015, Bryton notified the City code office of a recommendation by an engineering firm, Freeland Engineering, P.C. to install carbon fiber reinforced polymer (CFRP) bands on the interior of the foundation walls to fix the issues identified by Anderson. Bryton also informed the department that once it receives written permission from Ms. Anderson to perform the work, it would move forward and acquire the necessary permits.

Next, the City code office hired an independent third engineering firm, Bigoney Engineering (Bigoney) to evaluate the soils on Anderson's property.

In December of 2015, the City code office, after reviewing Bigoney's evaluation, wrote Anderson explaining that the presence of expansive soils under her home, as verified by three

separate engineering firms does, in fact, constitute a violation of VCC Section R403.1.8 (Foundations on Expansive Soils). At the same time, the City code office stated that the installation of CFRP bands was an acceptable remedy to the cited violation.

In January of 2016, Anderson agreed to allow Bryton to install the CFRP bands on her home's foundation; however, before the work was performed, she changed her mind and filed an appealed of the City code office's approval of the proposed remedy to the City of Fredericksburg's Local Building Code Board of Appeals (local appeals board).

Anderson then further appealed to the Review Board.

In her appeal, Anderson asks the Review Board to overturn the City code office's acceptance of CFRP bands as a method for reinforcing her home's foundation. During her testimony, Anderson admitted she initially rejected the use of the CFRP bands, but now agreed to accept them despite her belief that they will not correct the actual structural issues associated with the home. The City code office testified that, in its opinion, no outstanding VCC violations exist in Anderson's home; Anderson disagreed.

#### FINDINGS OF THE REVIEW BOARD

With respect to the approval of certain products or construction materials, VCC Section 112.3 provides the following guidance to code officials. It states, in pertinent part:

determining whether any material, equipment, device, assembly or method of construction complies with this code, the building official shall approve listed by nationally recognized laboratories, when such items are listed for the intended use and application, and in addition, may consider the recommendations of RDPs. Approval shall be issued when the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, equipment, device, assembly or method of construction offered is, for the purpose intended, at least the equivalent of that prescribed by the code. subject to all applicable approval is requirements of this code and the material, equipment, device, assembly or method of construction shall be installed in accordance with the conditions of the approval and their listings [...] "

Although the above section authorizes the code official to evaulate materials or equipment relying on nationally recognized testing laboratories and registered design professionals, the Review Board finds that City code office decision to accept the use of CFRP bands was flawed because it should have first required Bryton to provide additional soil testing of the base of the foundation at the rear of the home, as recommended by ECS in its December 15, 2014 report, to evaluate allowable soil bearing pressures and determine shrink swell potential. The

results of such testing could have, and may, ultimately affect whether the City code office accepts the use of CFRP bands, or some other reinforcing method to correct the cited violation.

Additionally, the Review Board finds that the City code office should issue a Notice of Violation to Bryton requiring it to have additional soil testing performed by a registered design professional at the rear of Anderson's home as recommended by ECS in its December 15, 2014 report.

#### III. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the City code office and the City appeals board to be, and hereby is, overturned.

Chairman, State Technical Review Board

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to

you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan McMahan,

Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

# VIRGINIA:

# BEFORE THE VIRGINIA STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE:

Appeal of Robert Jones

Appeal No. 16-2

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VIRGINIA:

# BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE:

Appeal of Robert Jones Appeal No. 16-2

### REVIEW BOARD STAFF DOCUMENT

# Suggested Statement of Case History and Pertinent Facts

- 1. In October of 2015, the Arlington County Department of Community Planning, Housing and Development (County), the agency responsible for the enforcement of Parts I (the Virginia Construction Code, or VCC) and III (the Virginia Maintenance Code or VMC) of the Virginia Uniform Statewide Building Code, acting on a complaint by a tenant, issued a Violation Notice to Robert Jones (Jones) on maintenance issues related to a building on his property at 5029 South 23<sup>rd</sup> Street in Arlington. The Notice cited Section 105.3 (*Unsafe conditions not related to maintenance*) of the 2012 VMC for a commercial property being used as dwelling.
- 2. Then in December of 2015, the County issued a second Violation Notice to Jones for several violations of the 2012 VMC, specifically: Sections 302.7 (Accessory Structures), 304.6 (Exterior walls), 304.7 (Roofs and drainage), 304.12 (Handrails and guardrails), 305.3 (Interior surfaces), and 604.3 (Electrical system hazards). On the same day, the County issued a Notice of Structure Unfit for Human Occupancy to Jones for violations of VMC Sections 402.1 (Habitable spaces), 403.1 (Habitable spaces), 702.4 (Emergency escape openings), and 704.2 (Smoke alarms). Also on the same day, the County issued a third Violation Notice to Jones for a

violation of VCC Section 108.1 (Application for permit) for unpermitted work converting a commercial building into four residential units.

- 3. In January of 2016, Jones filed an appeal of all four Notices to the Arlington County Local Board of Building Code Appeals (local appeals board) which heard the appeals in February of 2016 and ruled to uphold the issuance of all four Notices.
  - 4. Jones then further appealed to the Review Board.
- 5. Review Board staff conducted an informal fact-finding conference in August of 2016, attended by Jones, his legal counsel, and County representatives to clarify the issues in the appeal. During the meeting, the County explained that the building was originally constructed as a detached single-family dwelling, but was later remodeled into four units (two units upstairs and two units downstairs) by a previous owner. Jones explained that the building was being used as a four-unit apartment building when he purchased it in 2005 and that its use has not changed. The County referred to several Certificates of Occupancy (CO) indicating that the use of the building changed from a residence to a commercial business, the latest CO being for a deli on the lower level. Jones contended that because the deli was never constructed, the building remains an apartment building. Review Board staff then discussed each Notice with the parties to clarify the nature and extent of each specific violation. For the Review Board's consideration, each Violation Notice is listed below with each of its associated code violations set out as a "Suggested Issue for Resolution." Additionally, Review Board staff recommended that the parties provide current color photographs of the building and an accurate floor plan of the building for inclusion in the Review Board's agenda package.

October 2015 Violation Notice (County Reference Number: CE153127)

**7**5.39

Issue 1 – Whether the condition of the retaining wall at the rear and sides of the property constitutes a violation of Section 302.7 (Accessory Structure) of the 2012 VMC

Issue 2 – Whether the condition of the building's foundation walls constitutes a violation of Section 304.6 (Exterior walls) of the 2012 VMC

Issue 3 – Whether the condition of the gutter system at the front of the building constitutes a violation of Section 304.7 (Roofs and drainage) of the 2012 VMC

Issue 4 – Whether the condition of the exterior handrails at the side stairwell and rear ramp of the building constitute a violation of Section 304.12 (*Handrails and guards*) of the 2012 VMC

Issue 5 – Whether the condition of the interior surfaces of the building constitutes a violation of Section 305.3 (*Interior surfaces*) of the 2012 VMC

Issue 6 – Whether the missing electrical panel cover in the mechanical room constitutes a violation of Section 604.3 (Electrical system hazards) of the 2012 VMC

December 2015 Violation Notice (County Reference Number: CE153176)

Issue 7 – Whether the unpermitted work in the building constitutes a violation of Section 108.1 (When applications are required) of the 2012 VCC

December 2015 Violation Notice (County Reference Number: CE153177)

Issue 8 – Whether the use of a commercial building as a residential dwelling constitutes a violation of Section 105.3 (*Unsafe conditions not related to maintenance*) of the 2012

VMC M

DNO (

Theasing Courtines

December 2015 Notice of Structure Unfit for Human Occupancy (County Reference

Number: CE150807)

Issue 9 – Whether the amount of glazing area in the two rooms on the lower level of the building used as bedrooms constitutes a violation of Section 402.1 (*Light, habitable spaces*) of the 2012 VMC

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Issue 10 – Whether the amount of ventilation in the two rooms on the lower level of the building used as bedrooms constitutes a violation of Section 403.1 (Ventilation – habitable spaces) of the 2012 VMC

Issue 11 – Whether the sill height and size of the windows in the rooms on the lower level of the building used as bedrooms constitutes a violation of Section 702.4 (*Emergency escape openings*) of the 2012 VMC

Issue 12 – Whether the lack of operable smoke detectors in the upper and lower units of the building constitutes a violation of Section 704.2 (Smoke alarms) of the 2012 VMC

- 6. Following the discussion, Staff informed the parties that a staff document (i.e. summary) would be drafted and distributed to the parties for comment, and that time would be provided for the submittal of additional written arguments, objections, additions or corrections to the staff document or additional documents for the record.
- Review Board staff drafted this staff document in preparation for a hearing for the
   Review Board.

# **Basic Documents**

# **Violation Notice**

Gary Greene

**Building Maintenance Official** 

Code Program Manager

RESPONSIBLE PARTIES: Robert Jones

P O Box 6664

Arlington, Virginia 22206

1.0717-000 12 7010 1870 0001 0807 4853



CASE REFERENCE NUMBER

CE153177

PREMISES IN VIOLATION

5029 South 23<sup>rd</sup> Street Arlington, Virginia

October 20, 2015

ISSUANCE DATE

October 21, 2015

COMPLIANCE DATE

November 4, 2015

An inspection of the above premises has disclosed violations of Virginia Uniform Statewide Building Code and/or Virginia Maintenance Code, as referenced below. To abate this notice, you are directed to correct these violations by the compliance date indicated above.

If extenuating circumstances exist, your compliance deadline may be extended. A Request for Extension must be submitted, in writing, and received before the compliance deadline. For appropriate consideration, please include any supporting documentation and a projected date of completion in your written request. Submit the request to your inspector at the address noted above.

it is the responsibility of the owner or agent to schedule a re-inspection of the corrected conditions. Contact the assigned inspector at 703-228-3232 to schedule a reinspection of conditions. Inspectors may be reached between 8:00 A.M. - 9:30 A.M. and 4:00 – 4:30, business

You may be required to secure construction or construction trade permits for repairs referenced in this notice. Present a copy of this notice to the Permit Specialist when addressing your permitting needs to ensure the scope of the required work, is authorized by the appropriate

You have the right to appeal, provided that a written application for appeal is filed within fourteen (14) days after the notice is served. For information on how to appeal, call (703) 228-3232

CODE REFERENCE

VIOLATION

CORRECTION ACTION

Virginia Maintenance Code Section 105.3

Commercial property being used as a residential dwelling without the required Certificate of Approval.

ECONOMICE POR A PROPER LA CARREST. LA CARRONNE LA LABORA DE LA LABORA DE LA CARRON DEL CARRON DE LA CARRON DEL CARRON DE LA CARRON DEL CARRON DEL CARRON DE LA CARRON DEL CARRON DE LA CARO

Obtain the require Certificate of Approval for the current residential use or restore to previous permitted use as:

Page 1 of 2



PREMISES IN VIOLATION 5029 South 23rd Street		CASE REFERENCE NUMBER
VIOLATION DATE	December 22, 2015	OF TROATS
COMPLIANCE DATE	January 28, 2016	

Convenience Store/Deli # CO0201267, dated December 9, 2002.

IN CONJUNCTION WITH EFFORTS REQUIRED TO DIRECT COMPLIANCE AND RESOLVE CONDITIONS CITED IN THIS DOCUMENT, THE INSPECTOR MAY NOTE WHERE SPECIAL CONSTRUCTION OR LAND USE PERMITS OR APPROVALS ARE REQUIRED. HOWEVER, THE FAILURE TO DETAIL REQUIRED SUPPLEMENTAL APPROVALS AND PERMITS OR THE SCOPE OF WORK FOR PERMITS IN THE CORRECTION ACTION SECTION OF THIS DOCUMENT, DOES NOT INVALIDATE THE THE ZONING ADMINSTRATION (703-228-3883) SECTIONS TO DETERMINE IF THE SCOPE OF YOUR CORRECTIVE ACTION PLAN REQUIRES PERMITS OR OTHER SPECIAL APPROVALS.

J. Plor, Code Enforcement Inspector 703-228-3229



ARLINGTON COUNTY BOARD OF BUILDING CODE APPEAI &

Please mail to:

2100 Clarendon Blvd., Suite1000, Arlington, VA. 22201 Attention: Board of Building Code Appeals

BARNES LAWSON



# APPLICATION FOR APPEAL

Name of Building Owner Robert Jones
Address of Building Owner: 5604 Seminary Road, Alexandria, VA 22311
Name of Applicant: William B. Lawson, Jr., Esquire
Address of Applicant: 6045 Wilson Blvd., #100, Arlington, VA 22205
Applicant's Daytime Phone No.: 703-534-4800 E-mail Address: blawson@wblaws
Applicant's relationship to the property: law.com
☐ Owner ☐ Contractor ☐ Design Professional ☐ Attorney
☐ Other (explain):
Code Modification/Violation Case Number: CE153177
Reason for the Appeal (Indicate clearly why you think the code official's Interpretation of
the VUSBC is in error or the alternatives meet the intent and spirit of the code.
See Statement attached hereto.
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Relief sought:
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ATTACH A COPY OF CODE OFFICIAL'S DECISION AND ANY PERTINENT DOCUMENTS.
Applicant's Signature Date
- WATER Y 1 - 1/10/11
- 1/17/16
For Office use Only
Date Received: 1-19-16 Appeal number: A-PP160003
Pate Received: 1-11-16 Appeal number: 4-11-0004

DEPARTMENT OF COMMUNITY PLANNING HOUSING AND DEVELOPMENT INSPECTION SERVICES DIVISION

2100 CLARENDON BLVD, SUITE 1000 ARLINGTON, VA 22201 TEL 703.228.3800 FAX 703.228.7046

# RECEIPT

RECEIPT NUMBER: R16000839

PERMIT #: APP140009

SITE ADDRESS: 5029 23RD ST S ARL

PARCEL: 28019034

Permit Holder: WILLIAM B. LAWSON JR

TYPE: Building Code Appeal

TRANSACTION DATE: 01/19/2016

**TOTAL PAYMENT:**\$

511.18

**TOTAL PAID FROM TRUST:**\$

.00

**TOTAL PAID FROM CURRENCY:\$** 

511.18

TRUST TRANS LIST:

TRANSACTION LIST: Type Method

Description

Amount

Payment

Check

19967\*LO

511.18

511.18

ACCOUNT ITEM LIST:

Description

Account Code

· Current Pmts

BLDG:2% VA Surcharge

Building Code Appeal

77129665600000000000000000

57032220072201000000000000

**TOTAL:**\$

8.38 502.80

TOTAL: \$ 511.18

RECEIPT ISSUED BY: DPAULETTI

INITIALS: DAP

ENTERED DATE: 01/19/2016

TIME: 01:01 PM

**TOTAL FEES:** 

\$511.18 **BALANCE DUE:** 

\$0.00

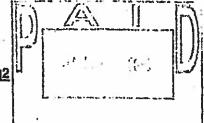
The 15% Indirect Cost Fee and 10% Automation Enhancement Fee has been applied to the permit fee.



To check the status of your permit, scan the QR Code or go to our website:

http://permits.arlingtonva.us

Survey: How are we doing? www.surveymonkey.com/s/isdqaacss2014q2



#### STATEMENT

#### Case Reference No. CE153177

In support of his application for appeal of the Violation Notice issued on October 21, 2015 in the above-referenced case, the Applicant states the following:

On October 21, 2015, a Violation Notice was issued to the Applicant citing a violation of Virginia Maintenance Code Section 105.3 on October 20, 2015. The Notice was received by Attorney William B. Lawson, Jr., counsel for the Applicant on January 6, 2016.

On that same date, Attorney Lawson received Violation Notices with Case Reference Numbers CE153175, CE153175, CE150807 and CE153178. Each of these Violation Notices was issued on December 28, 2015 for an alleged violation date of December 22, 2015. The Applicant objects to the issuance of four separate Violation Notices for alleged violations occurring on the same date at the same property, each requiring a separate filing fee from the Applicant in order to apply for appeal. These Notices should be consolidated as a single Violation Notice to the Applicant.

The Applicant further objects to the Violation Notice on the grounds that the Code Reference cited is Virginia Maintenance Code Section 105.3. That section reads as follows:

105.3 <u>Unsafe conditions not related to maintenance</u>. When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in effect when the structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the structure to remedy the condition.

The Violation referenced is: "Commercial property being used as a residential dwelling without the required Certificate of Approval." This Violation referenced is apparently an alleged violation of an Arlington County Zoning Ordinance, not a violation of the Virginia Uniform Statewide Building Code Building Code or Virginia Maintenance Code. Enforcement of the Arlington County Zoning Ordinance is not within the purview of the Arlington Building Inspection Department.

Furthermore, on information and belief, the property has always been used as residential property, and therefore, should be grandfathered.

The Applicant reserves the right to submit additional information as it becomes available.

#### CE153177

In this violation notice the Building Code staff contends that commercial property is being used as residential dwelling without the required Certificate of Occupancy.

This is a zoning issue and an appeal has been filed with the Board of Zoning Appeals.

This is why the Owner requested a deferral, which was denied by the Building Code staff.

In addition to being a zoning issue, the Code Section cited has absolutely nothing to do with the alleged violation.

The cited Code Section reads:

105.3 Unsafe conditions not related to maintenance. When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in effect when the structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the structure to remedy the condition.

In no way can this Code Section be construed as requiring the Owner to obtain the required Certificate of Occupancy for the current residential use or revert to previous permitted use as Corner Store Deli.

The Owner also notes that the Certificate of Occupancy for the Corner Store Deli was for the first floor only.

## **Violation Notice**

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Ins

210

Arti

Tele Cod

Dana

Gary Greene

Building Maintenance Official

Code Program Manager



RESPONSIBLE PARTIES:

Robert Jones

P.O Box 6664

Arlington, Virginia 22206

7010 1870 0001 0807 4859

14 days

CASE REFERENCE NUMBER

CE153175

PREMISES IN VIOLATION

5029 South 23<sup>rd</sup> Street Arlington, Virginia

VIOLATION DATE

December 22, 2015

ISSUANCE DATE

December 28, 2015

COMPLIANCE DATE

January 28, 2016

An inspection of the above premises has disclosed violations of Virginia Uniform Statewide Building Code and/or Virginia Maintenance Code, as referenced below. To abate this notice, you are directed to correct these violations by the compliance date indicated above.

If extenuating circumstances exist, your compliance deadline may be extended. A Request for Extension must be submitted, in writing, and received before the compliance deadline. For appropriate consideration, please include any supporting documentation and a projected date of completion in your written request. Submit the request to your inspector at the address noted above.

It is the responsibility of the owner or agent to schedule a re-inspection of the corrected conditions. Contact the assigned inspector at 703-228-3232 to schedule a reinspection of conditions. Inspectors may be reached between 8:00 A.M. - 9:30 A.M. and 4:90 – 4:30, business days.

You may be required to secure construction or construction trade permits for repairs referenced in this notice. Present a copy of this notice to the Permit Specialist when addressing your permitting needs to ensure the scope of the required work, is authorized by the appropriate permit.

You have the right to appeal, provided that a written application for appeal is filed within fourteen (14) days after the notice is served. For information on how to appeal, call (703) 228-3232

CODE REFERENCE

VIOLATION

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CORRECTION ACTION

Virginia Maintenance Code Section 302.7 Defective and failing Accessory Structure (retaining wall out of plumb and broken) at side and rear of property.

Repair; replace or remove the defective Accessory Structure (retaining wall). All Accessory Structures, including retaining walls, fences, shall be maintained structurally sound and in good repair.

Page 1 of 2



5029 South 23rd Street
VIOLATION DATE | December

**COMPLIANCE DATE** 

December 22, 2015 January 28, 2016 genaen 76

Virginia Maintenance Code Section 304.6

Virginia Maintenance Code Section 304.7

Virginia Maintenance Code Section 304.12

Virginia Maintenance Code Section 305.3

Virginia Maintenance Code Section 604.3

Defective foundation walls (cracked and Open) at side of property.

Defective gutter system at front of property.

Defective and unsecure safety handrall at the stairwell at side of property and at the stairwell at rear of building.

Defective interior surfaces (cracked and holes) throughout the interior of dwelling.

Missing electrical panel cover at the mechanical room.

Repair or replace the defective sections of exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials, and maintained weatherproof and properly surface coated where required to prevent deterioration.

Repair or replace the gutter system at dwelling. Maintain free of debris, so rain water could run freely and maintain in good condition.

Repair or replace the defective safety handrail. Every safety handrail shall firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

Repair the defective interior surfaces (cracked and holes). All interior surfaces, shall be maintained in good, clean and sanitary condition.

Install the required electrical panel cover, in order to prevent any electrical hazards.

IN CONJUNCTION WITH EFFORTS REQUIRED TO DIRECT COMPLIANCE AND RESOLVE CONDITIONS CITED IN THIS DOCUMENT, THE INSPECTOR MAY NOTE WHERE SPECIAL CONSTRUCTION OR LAND USE PERMITS OR APPROVALS ARE REQUIRED. HOWEVER, THE FAILURE TO DETAIL REQUIRED SUPPLEMENTAL APPROVALS AND PERMITS OR THE SCOPE OF WORK FOR PERMITS IN THE CORRECTION ACTION SECTION OF THIS DOCUMENT, DOES NOT INVALIDATE THE THE ZONING ADMINSTRATION (703-228-3883) SECTIONS TO DETERMINE IF THE SCOPE OF YOUR CORRECTIVE ACTION PLAN REQUIRES PERMITS OR OTHER SPECIAL APPROVALS.

J. Flor Code Enforcement Inspector 703-228-3229

Page 2 of 2



ARLINGTON COUNTY BOARD OF BUILDING CODE APPE

2100 Clarendon Blvd., Suite1000, Arlington, VA. 22201 Attention: Board of Building Code Appeals

BARNES LAWSON Permit#: APP160004



## APPLICATION FOR APPEA

Name of Building Owner Robert Jone	s
Address of Building Owner: 5604 Semin	ary Road, Alexandria, VA 22311
Name of Applicant: William B. Lawso	n, Jr., Esquire
Address of Applicant: 6045 Wilson Blv	d., #100, Arlington, VA 22205
Applicant's Daytime Phone No.: 703-534	4900
Applicant's relationship to the property:	law.com
□ Owner □ Contractor	☐ Design Professional ☐ Attorney
□ Other (explain):	- Victorial y
code Modification/Violation Case Number:	CE153175 ·
Reason for the Appeal (indicate clearly why	you think the code official's interpretation of
the VUSBC is in error or the alternatives me	eet the intent and spirit of the code?
See Statement attached hereto.	the trice and spirit of the code);
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ATTACH A COPY OF CODE OFFICIAL'S DEC	ISION AND ANY PERTINENT DOCUMENTS.
Applicant's Signature	Date
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For Office use Only	the second section and
1 12 0	A-PP160004
Date Received: 1-19-16	Appeal numbers ATP + + 10010

Appeal number:

DEPARTMENT OF COMMUNITY PLANNING HOUSING AND DEVELOPMENT INSPECTION SERVICES DIVISION.

2100 CLARENDON BLVD, SUITE 1000 ARLINGTON, VA 22201 TEL 703.228.3800 FAX 703.228.7046 网络农民人民

## RECEIPT

RECEIPT NUMBER: R16000840

PERMIT #: APP140010

SITE ADDRESS: 5029 23RD ST S ARL

PARCEL: 28019034

TYPE: Building Code Appeal

Permit Holder: WILLIAM B. LAWSON JR

TRANSACTION DATE: 01/19/2016

**TOTAL PAYMENT:\$** 

511.18

TOTAL PAID FROM TRUST:\$ **TOTAL PAID FROM CURRENCY:**\$

.00 511.18

TRUST TRANS LIST:

TRANSACTION LIST:

Type Method

Description

Amount

Payment

Check

19967\*LO

511.18

511.18

ACCOUNT ITEM LIST:

Description

Account Code

TOTAL: \$

BLDG: 2% VA Surcharge

Current Pmts

Building Code Appeal

77129665600000000000000000 57032220072201000000000000

TOTAL:\$

8.38 502.80

511.18

RECEIPT ISSUED BY: DPAULETTI

INITIALS: DAP

ENTERED DATE: 01/19/2016

TIME: 01:05 PM

**TOTAL FEES:** 

\$511.18 BALANCE DUE:

\$0.00

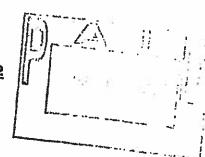
The 15% Indirect Cost Fee and 10% Automation Enhancement Fee has been applied to the permit fee.



To check the status of your permit, scan the QR Code or go to our website:

http://permits.arlingtonva.us

Survey: How are we doing? www.surveymonkey.com/s/isdqaacss2014q2



#### STATEMENT

#### Case Reference No. CE153175

In support of his application for appeal of the Violation Notice issued on December 28, 2015 in the above-referenced case, the Applicant states the following:

On December 28, 2015, a Violation Notice was issued to the Applicant citing a violation of Virginia Maintenance Code Sections 304.6, 304.7, 304.12, 305.3 and 604 on December 22, 2015. The Notice was received by Attorney William B. Lawson, Jr., counsel for the Applicant on January 6, 2016.

On that same date, Attorney Lawson received Violation Notices with Case Reference Numbers CE153176, CE150807 and CE153178. Each of these Violation Notices was issued on December 28, 2015 for an alleged violation date of December 22, 2015. The Applicant objects to the issuance of four separate Violation Notices for alleged violations occurring on the same date at the same property, each requiring a separate filing fee from the Applicant in order to apply for appeal. These Notices should be consolidated as a single Violation Notice to the Applicant. On that same date, Attorney Lawson received a Violation Notice with Case Reference Number CE153177 dated October 21, 2015 for an alleged Violation Date of October 20, 2015, relating to the same property.

The Applicant further objects to the Violation Notice on the grounds that the alleged violations cited are the result of an improper search of the property pursuant to an improperly obtained search warrant.

On December 17, 2015, a Building Inspection Warrant was issued pursuant to Virginia Code § 36-105. That Code Section states in pertinent part:

Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a

reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

The Affidavit in support of the Building Inspection Warrant stated that "the material facts constituting probably cause that the search should be made are that the inspection is necessary to investigate a suspected violation of the Building Code that poses an immediate and imminent threat to the health and safety of the owner, tenant or occupants of the building or structure, or the owner, occupant or tenant of a nearby building or structure based on the following evidence of a violation of such code:"

Arlington County Zoning Ordinance Article 15.2.1-converting a commercial building to a residential building without a Certificate of Occupancy. Arlington County Zoning OrdinanceArticle 17.1.A converting a commercial building to an unpermitted multifamily dwelling in a C-2 district.

The apartments do not have two egresses in case of a fire.

The allegations supporting the Building Inspection Warrant are allegations of an alleged Zoning Violation, not a suspected violation of the Building Code. There are, therefore, no material facts constituting probably cause for issuance of the Warrant, and therefore, the search conducted pursuant to the Warrant was an illegal and unreasonable search. The United States Supreme Court has long held that a warrantless search of a person's property for the purpose of conducting a building inspection violates that person's Fourth Amendment Rights.

"We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. .. But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

Camara v. Municipal Court, 387 U.S. 523, 530 (1967).

Any findings by the inspector during the illegal search are "fruit of the poisonous tree," and as such cannot constitute the basis of the Violation Notice. The Violation Notice must be dismissed.

### The Property Has Always been a Residential Property

On information and belief, the subject property has always been a residential property. Any commercial activity has been conducted out of apartments in the property, and therefore should be grandfathered. The allegation that the property was "converted to Residential" is factually incorrect.

Finally, the allegation that the "apartments do not have two egresses" is not supportable as the property predates such requirements in the Virginia Uniform Statewide Building Code, and therefore should be grandfathered.

The Applicant reserves the right to supplement this statement as facts become available.

# **Violation Notice**



RESPONSIBLE PARTIES: Robert Jones

P O Box 6664

Arlington, Virginia 22206

7010 1670 0003 0607 4853

14 days



DEPARTMENT OF COMMUNITY PLANNING, HOUSING AND DEVELOPMENT

Inspection Services Division-Code Enforcement

2100 Clarendon Boulevard, Suite 1000, Arlington, VA 22201

Telephone 703-228-3232 Fax 703-228-3241 CodeEnforcement@ArlingtonVa.us

Dana Wilson

Supervisor-Code Enforcement

Gary Greene

Building Maintenance Official

Code Program Manager

CASE REFERENCE NUMBER

CE153176

PREMISES IN VIOLATION

5029 South 23rd Street Arlington, Virginia

TOLATION DATE

December 22, 2015

ISSUANCE DATE

December 28, 2015

COMPLIANCE DATE

January 28, 2016

An inspection of the above premises has disclosed violations of Virginia Uniform Statewide Building Code and/or Virginia Maintenance Code, as referenced below. To abate this notice, you are directed to correct these violations by the compliance date indicated above.

If extenuating circumstances exist, your compliance deadline may be extended. A Request for Extension must be submitted, in writing, and received before the compliance deadline. For appropriate consideration, please include any supporting documentation and a projected date of completion in your written request. Submit the request to your inspector at the address noted above.

It is the responsibility of the owner or agent to schedule a re-inspection of the corrected conditions. Contact the assigned inspector at 703-228-3232 to schedule a reinspection of conditions. Inspectors may be reached between 8:00 A.M. - 9:30 A.M. and 4:00 – 4:30, business

You may be required to secure construction or construction trade permits for repairs referenced in this notice. Present a copy of this notice to the Permit Specialist when addressing your permitting needs to ensure the scope of the required work, is authorized by the appropriate

You have the right to appeal, provided that a written application for appeal is filed within fourteen (14) days after the notice is served. For

CODE REFERENCE

VIOLATION

CORRECTION ACTION

Virginia Uniform Statewide Building Code Part I, 'Virginia Construction Code Section 108.1

Unpermitted work being performed (illegal conversion of a commercial building into four residential units with full bathrooms), at both lavels, without the required approvals.

TOP IN THE STATE OF A SECURITION OF THE RESERVE THE SECURITIES, OF SECURITIES ASSETS, OF SECURITIES, OF SECURI

Apply for and obtain the necessary permit(s): (Building, Electrical, Plumbing and Mechanical) for the scope of the work that has been performed or have the

Page 1 of 2



PREMISES IN VIOLATION 5029 South	23 <sup>rd</sup> Street	GASE REFERENCE NUMBER
VIOLATION DATE	December 22, 2015	CELEGIFO INC
COMPLIANCE DATE	January 28, 2016	

structure return to its original design. Secure the required Permit (s) from the Inspection Services Division-Permits Section at: 2100 Clarendon Boulevard, Suite 1000, Arlington, Virginia. 22201

IN CONJUNCTION WITH EFFORTS REQUIRED TO DIRECT COMPLIANCE AND RESOLVE CONDITIONS CITED IN THIS DOCUMENT, THE INSPECTOR MAY NOTE WHERE SPECIAL CONSTRUCTION OR LAND USE PERMITS OR APPROVALS ARE REQUIRED. HOWEVER, THE FAILURE TO DETAIL REQUIRED SUPPLEMENTAL APPROVALS AND PERMITS OR THE SCOPE OF WORK FOR PERMITS IN THE CORRECTION ACTION SECTION OF THIS DOCUMENT, DOES NOT INVALIDATE THE NEED FOR ANY REQUIRED APPROVALS OR PERMITS BY CODE OR ORDINANCE. BE ADVISED TO CONTACT THE CONSTRUCTION PERMIT (703-228-3883) AND/OR SPECIAL APPROVALS.

J. Flor, Code Enforcement Inspector 703-228-3229



ARLINGTON COUNTY BOARD OF BUILDING CODE APPEALS
Please mail to:

2100 Clarendon Blvd., Suite1000, Arlington, VA. 22201 Attention: Board of Building Code Appeals

# APPLICATION FOR APPEAL

Name of Building Owner, Robe	ert Jones	
Address of Building Owner: 56	04 Seminary Road, Alexand	ia, VA 22311
Name of Applicant: William	B. Lawson, Jr., Esquire	The state of the s
Address of Applicant: 6045 Wi	lson Blvd., #100, Arlingto	on. VA 22205
Applicant's Daytime Phone No.:	703-534-4800 E-mail Address:	blawson@wblawson
Applicant's relationship to the pr	operty:	law.com
Owner Contractor		
☐ Other (explain):		
Code Modification Violation Case	Number: <u>CE153176</u>	
Reason for the Appeal (indicate	clearly why you think the code officia	al's Interpretation of
the VUSBC is in error or the alte	rnatives meet the intent and spirit of	the code).
See Statement attached	hereto.	
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ATTACH A COPY OF CODE OFFI	CIAL'S DECISION AND ANY PERTINE	
Applicant's Signature		
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For Office use Only Date Received:	Appeal number:	7

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English

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Customer Service )
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Tracking Number: 70101870000108074846

#### Product & Tracking Information

Postal Product:

Features:

Certifled Mail

DATE & TIME

STATUS OF ITEM

LOCATION

January 2, 2016 , 12:25 am

Arrived at USPS Facility

MERRIFIELD, VA 22081

Your item arrived at our USPS facility in MERRIFIELD, VA 22081 on January 2, 2016 at 12:25 am. The Item is currently in transit to the destination.

January 1, 2016 , 5:44 am

Departed USPS Facility

CAPITOL HEIGHTS, MD 20790

December 31, 2015 , 3:51

Del 011 2010 1 0101

Arrived at USPS Facility CAPITOL HEIGHTS, MD 20790

December 26, 2015, 11;08

am

Moved, Left no Address

ARLINGTON, VA 22206

December 26, 2015 , 8:31

ARLINGTON, VA 22206

December 26, 2015 , 8:21

477

Sorting Complete

**Out for Delivery** 

ARLINGTON, VA 22208

December 26, 2015 , 7:35

Attived at Unit

ARLINGTON, VA 22205

December 25, 2015 , 2:37

Departed USPS Facility

MERRIFIELD, VA 22081

December 23, 2015 , 10:52

pm

Arrived at USPS Facility

MERRIFIELD, VA 22081

### Track Another Package

Tracking (or receipt) number

70101870000108074846

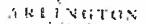
Track it

Manage Incoming Packages

Track all your packages from a dashboard No tracking numbers necessary.

Sign up for My USPS >





2100 CLARENDON BLVD, SUITE 1000 ARLINGTON, VA 22201 

### RECEIPT

RECEIPT NUMBER: R16000838

PERMIT #: APP14000B

SITE ADDRESS: 5029 23RD ST S ARL

PARCEL: 28019034

TYPE: Building Code Appeal

Permit Holder: WILLIAM B. LAWSON JR

TRANSACTION DATE: 01/19/2016

**TOTAL PAYMENT:**\$

511.18

**TOTAL PAID FROM TRUST:\$** 

.00

**TOTAL PAID FROM CURRENCY:**\$

511.18

TRUST TRANSLIST:

TRANSACTION LIST: Type

Method

Description

Amount

Payment

Check

19967\*LO

511.18 TOTAL:\$

511.18

ACCOUNT ITEM LIST:

Description

Account Code

Current Pmts

TOTAL: \$ 511.18

BLDG:2% VA Surcharge

77129665600000000000000000

Building Code Appeal

57032220072201000000000000

502.80

RECEIPT ISSUED BY: DPAULETTI

INITIALS: DAP

ENTERED DATE: 01/19/2016 TOTAL FEES:

\$511.18 BALANCE DUE:

TIME: 12:59 PM \$0.00

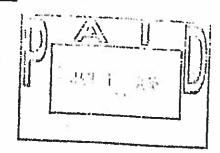
The 15% Indirect Cost Fee and 10% Automation Enhancement Fee has been applied to the permit fee.



To check the status of your permit, scan the QR Code or go to our website:

http://permits.arlingtonva.us

Survey: How are we doing? www.surveymonkey.com/s/isdqaacss2014q2



#### STATEMENT

#### Case Reference No. CE153176

In support of his application for appeal of the Violation Notice issued on December 28, 2015 in the above-referenced case, the Applicant states the following:

On December 28, 2015, a Violation Notice was issued to the Applicant citing a violation of Virginia Construction Code Section 108.1 on December 22, 2015. The Notice was received by Attorney William B. Lawson, Jr., counsel for the Applicant on January 6, 2016.

On that same date, Attorney Lawson received Violation Notices with Case Reference Numbers CE153175, CE15378 and CE150807. Each of these Violation Notices was issued on December 28, 2015 for an alleged violation date of December 22, 2015. On that same date, Attorney Lawson received a Violation Notice with Case Reference Number CE153177 dated October 21, 2015 for an alleged Violation Date of October 20, 2015, relating to the same property.

#### The Inspection Was Conducted without a Proper Warrant

The Applicant further objects to the Violation Notice on the grounds that the alleged violations cited are the result of an improper search of the property pursuant to an improperly obtained search warrant.

On December 17, 2015, a Building Inspection Warrant was issued pursuant to Virginia Code § 36-105. That Code Section states in pertinent part:

Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

The Affidavit in support of the Building Inspection Warrant stated that "the material facts constituting probably cause that the search should be made are that the inspection is necessary to investigate a suspected violation of the Building Code that poses an immediate and imminent threat to the health and safety of the owner, tenant or occupants of the building or structure, or the owner, occupant or tenant of a nearby building or structure based on the following evidence of a violation of such code:"

Arlington County Zoning Ordinance Article 15.2.1-converting a commercial building to a residential building without a Certificate of Occupancy. Arlington County Zoning OrdinanceArticle 17.1.A converting a commercial building to an unpermitted multifamily dwelling in a C-2 district.

The apartments do not have two egresses in case of a fire.

First, there is no allegation that any complaint being received "that a violation of the Building Code existed." Second, the allegations supporting the Building Inspection Warrant are allegations of an alleged Zoning Violation, not a suspected violation of the Building Code. There are, therefore, no material facts constituting probably cause for issuance of the Warrant, and therefore, the search conducted pursuant to the Warrant was an illegal and unreasonable search. The United States Supreme Court has long held that a warrantless search of a person's property for the purpose of conducting a building inspection violates that person's Fourth Amendment rights.

"We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. .. But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

Camara v. Municipal Court, 387 U.S. 523, 530 (1967).

Any findings by the inspector during the illegal search are "fruit of the poisonous tree," and as such cannot constitute the basis of the Violation Notice.

### The Property Has Always been a Residential Property

On information and belief, the subject property has always been a residential property. Any commercial activity has been conducted out of apartments in the property, and therefore should be grandfathered. The allegation that the property was "converted to Residential" is factually incorrect.

Finally, the allegation that the "apartments do not have two egresses" is not supportable as the property predates such requirements in the Virginia Uniform Statewide Building Code, and therefore should be grandfathered.

The Applicant reserves the right to supplement this statement as facts become available.

#### CE153176

In this violation notice the Building Code staff contends that there has been an illegal conversion of a commercial building into four (4) residential units with full bathrooms and that the commercial property is being used as residential dwelling without the required Certificate of Occupancy.

This is a zoning issue and an appeal has been filed with the Board of Zoning Appeals.

This is why the Owner requested a deferral, which was denied by the Building Code staff.

It is pure conjecture on the part of the County that this was an illegal conversion. Mr. Jones, and the prior owner, state that the building was used residentially.

The Owner also notes that all of the Certificates of Occupancy for commercial use were for the first floor only.

A permit or any amendments to an existing permit shall not be issued until the designated fees have been paid, except that the building official may authorize the delayed payment of fees.

107.1.2 Refunds. When requested in writing by a permit holder, the locality shall provide a fee refund in the case of the revocation of a permit or the abandonment or discontinuance of a building project. The refund shall not be required to exceed an amount which correlates to work not completed.

107.1.3 Fees for generators used with amusement devices. Fees for generators and associated wiring used with amusement devices shall only be charged under the Virginia Amusement Device Regulations (13VAC5-31).

107.2 Code academy fee levy. In accordance with subdivision 7 of Section 36-137 of the Code of Virginia, the local building department shall collect a 2.0% levy of fees charged for permits issued under this code and transmit it quarterly to DHCD to support training programs of the Virginia Building Code Academy. Localities that maintain individual or regional training academies accredited by DHCD shall retain such levy.

## SECTION 108 APPLICATION FOR PERMIT

108.1 When applications are required. Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities, except that applications for emergency construction, alterations or equipment replacement shall be submitted by the end of the first working day that follows the day such work commences. In addition, the building official may authorize work to commence pending the receipt of an application or the issuance of a permit.

- Construction or demolition of a building or structure. Installations or alterations involving (i) the removal or addition of any wall, partition or portion thereof, (ii) any structural component, (iii) the repair or replacement of any required component of a fire or smoke rated assembly, (iv) the alteration of any required means of egress system, (v) water supply and distribution system, sanitary drainage system or vent system, (vi) electric wiring, (vii) fire protection system, mechanical systems, or fuel supply systems, or (viii) any equipment regulated by the USBC.
- For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required under Section 103.3.

- Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.
- Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

108.2 Exemptions from application for permit. Notwithstanding the requirements of Section 108.1, application for a permit and any related inspections shall not be required for the following; however, this section shall not be construed to exempt such activities from other applicable requirements of this code. In addition, when an owner or an owner's agent requests that a permit be issued for any of the following, then a permit shall be issued and any related inspections shall be required.

- Installation of wiring and equipment that (i) operates at less than 50 volts, (ii) is for network powered broadband communications systems, or (iii) is exempt under Section 102.3(1), except when any such installations are located in a plenum, penetrate fire rated or smoke protected construction or are a component of any of the following:
  - 1.1. Fire alarm system.
  - 1.2. Fire detection system.
  - 1.3. Fire suppression system.
  - 1.4. Smoke control system.
  - 1.5. Fire protection supervisory system.
  - 1.6. Elevator fire safety control system.
  - 1.7. Access or egress control system or delayed egress locking or latching system.
  - 1.8. Fire damper.
  - 1.9. Door control system.
- One story detached structures used as tool and storage sheds, playhouses or similar uses, provided the building area does not exceed 256 square feet (23.78 m²) and the structures are not classified as a Group F-1 or H occupancy.
- Detached prefabricated buildings housing the equipment of a publicly regulated utility service, provided the floor area does not exceed 150 square feet (14 m²).



## **NOTICE OF** STRUCTURE UNFIT FOR **HUMAN OCCUPANCY**

DEPARTMENT OF COMMUNITY PLANNING. HOUSING AND DEVELOPMENT

Inspection Services Division-Code Enforcement

2100 Clarendon Boulevard, Suite 700, Arlington, VA 22201

Telephone 703-228-3232 Fax 703-228-3241 CodeEnforcement@ArlingtonVa.us

Dana Wilson

Supervisor-Inspections

Gary Greene

Code Enforcement Manager

RESPONSIBLE PARTIES:

**Robert Jones** 

P O Box 6664

Arlington, Virginia 22206

STORY OF THIS BUT.

7010 1670 0001 0607 4646



14 days

POSTED ON PREMISES December 23, 2015

CASE REFERENCE NUMBER

CE150807

PREMISES IN VIOLATION

5029 South 23rd Street Ariington, Virginia

VIOLATION DATE

December 22, 2015

ISSUANCE DATE

December 23, 2015

COMPLIANCE DATE

December 28, 2015

The premises noted above has been inspected, declared and placarded as:

#### **UNSAFE OR UNFIT FOR HUMAN OCCUPANCY**

Its use or occupancy has been prohibited by the Building Maintenance Official

Virginia Uniform Statewide Building Code, Part III (Virginia Maintenance Code), Sections 105.1, 105.2, 105.4, 105.4.1, 105.5, 105.6, 105.7, 105.8 105.9 and 105.10

- You are hereby ordered to immediately vacate the structure and/or discontinue the use of the referenced structure.
- The structure shall be maintained secure from unlawful entry or trespass, at all points.
- The placard placed on the structure shall not be removed until authorized by the Building Maintenance Official, nor shall the placard be defaced.
- The referenced structure shall not be entered, re-occupied or returned to productive use without the written authorization of the Building Maintenance Official.
- The Building Maintenance Official may authorize emergency demolition or repairs to referenced structures to establish temporary safeguards, whether or not legal action to compel compliance has been initiated.
- The Building Maintenance Official shall be permitted to seek revocation of the Certificate of Occupancy for disregard and/or refusal to comply with conditions of this notice or referenced violations within the period specified.
- Arlington County may institute appropriate action against the owner to recover the costs association with emergency repairs or demolition, in accordance with Sections 15.2-906 and 15.2-1115 of the Code of Virginia.

Page 1 of 4

## NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY



PREMISES IN VIOLATION 5029 South	CASE REFERENCE NUMBER	
VIOLATION DATE	December 22, 2015	CE150807
COMPLIANCE DATE	December 28, 2015	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

You may be required to secure permits for repairs referenced on this notice. Present a copy of this notice to technicians when addressing your permitting needs to ensure the scope of work intended or required is covered and authorized by permit.

It is the duty of the owner or responsible party to schedule a re-inspection of the corrected conditions. Contact the assigned inspector at 703-228-3232 to schedule a reinspection of conditions. Inspectors may be reached between 8:00 A.M. - 9:30 A.M. and 4:00 – 4:30, business days.

If extenuating circumstances exists, the compliance date may be extended. The owner or responsible party may submit a request for extension of compliance to the assigned inspector. For consideration, the request for extension of compliance must be submitted, in writing, and received prior to the compliance deadline. You have the right to appeal to the Board of Appeals, provided that a written application for appeal is filed within fourteen days after the notice is served.

#### **CODE REFERENCE**

#### Virginia Maintenance Code Section 482.1

#### Virginia Maintenance Code Section 463.4

#### Virginia Maintenance Code Section 702.4

#### Virginia Maintenance Code Section 704.2

#### VIOLATION

## Two rooms (2) in the lower level are being used as bedroom, do not have the minimum requirement for light at the lower level.

## Two rooms (2) in the lower level are being used as bedroom, do not have the minimum requirement for ventilation at the lower level.

#### inadequate emergency escape opening (window too small and the window sill too high from the finished floor) in the rooms at basement being used as sleeping room

#### Missing/defective smoke detectors in the Units at the upper and lower levels of the property.

#### CORRECTION ACTION

Cease and desist on the usage of these rooms. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room.

Cease and desist on the usage of these rooms. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room.

Cease and Desist in the occupancy of this unapproved space as bedroom or use the room as storage room only. Secure the required Building Permit and related permits to have this room approved to be a sleeping room from the Inspection Services Division-Permits Section at: 2100 Clarendon Boulevard, Suite 1000, Arlington, Virginia 22201

Install, repair or replace the missing and defective smoke detectors in the units. Keep the smoke detectors in good condition and working conditions at all times.

## NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY:



PREMISES IN VIOLATION	200	CASEREFERENCE NUMBER
5029 South	23rd Street	4 6 8
. VIOLATION DATE	December 22, 2015	CE150807
COMPLIANCE DATE	December 28, 2015	

EN COMMUNCTION WITH EFFORTS REQUIRED TO DIRECT COMPLIANCE AND RESOLVE CONDITIONS CITED IN THIS DOCUMENT, THE INSPECTOR MAY MOTE WHERE SPECIAL CONSTRUCTION OR LAND USE PERMITS OR APPROVALS ARE REQUIRED. HOWEVER, THE FAILURE TO DETAIL REQUIRED SUPPLEMENTAL APPROVALS AND PERMITS OR THE SCOPE OF WORK FOR PERMITS IN THE CORRECTION ACTION SECTION OF THIS DOCUMENT, DOES NOT INVALIDATE THE NEED FOR ANY REQUIRED APPROVALS OR PERMITS BY CODE OR ORDINANCE. BE ADVISED TO CONTACT THE CONSTRUCTION PERMIT (703-228-3800) AND/OR THE ZONING ADMINISTRATION (703-228-3803) SECTIONS TO CETERMINE IF THE SCOPE OF YOUR CORRECTIVE ACTION PLAN REQUIRES PERMITS OR OTHER SPECIAL APPROVALS.

J. Flor, Code Enforcement Inspector 703-228-3229

Page 3 of 4

## NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY



PREMISES IN VIOLATION	<del></del>	CASE REFERENCE NUMBER
5029 South	23 <sup>rd</sup> Street	of 2 5
VIOLATION DATE	December 22, 2015	CE150807
COMPLIANCE DATE	December 28, 2015	

1	*	9 5	have received	this notice and 1:		
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	ACCEPT the conditions	of this notice.		9		
	REJECT the conditions of	of this notice.	3K			
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Signature	¥.	g)	Date			
Please return	this page to:	**	5	457		- 8
**	Arlington County Office of 2100 Clarendon Bouleva Arlington, Virginia 22201	of Code Enforcement rd, Suite 700	ent			
Or you may fa	ax it to:		C 200			

703-228-3241



ARLINGTON COUNTY BOARD OF BUILDING CODE APPE

2100 Clarendon Blvd., Suite1000, Arlington, VA. 22201 Attention: Board of Building Code Appeals

1-19-16

Date Received:

BARNES LAWSON



## APPLICATION FOR APPEAL

58			
Name of Build	ling Owner, Robert Jon	es	
Address of Bu	llding Owner: 5604 Semi	nary Road, Alexandr	cia, VA 22311
Name of Appli	cant: William B. Laws	on, Jr., Esquire	
Address of Ap	plicant: 6045 Wilson B	lvd., #100, Arlingte	on, VA 22205
Applicant's Da	ytime Phone No.: 703-53	4-4800 E-mail Address:	blawson@wblawso
Applicant's rel	ationship to the property:		law.com
□ Owner	☐ Contractor	Design Professional	☐ Attorney
☐ Other (explanation)	ain):		
	tion/Violation Case Number		
Reason for the	Appeal (indicate clearly w	hy you think the code offici	al's interpretation of
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Appeal number:

LINGTON

DEPARTMENT OF COMMUNITY PLANNING HOUSING AND DEVELOPMENT INSPECTION SERVICES DIVISION

2100 CLARENDON BLVD, SUITE 1000 ARLINGTON, VA 22201 

### RECEIPT

RECEIPT NUMBER: R16000837

PERMIT #: APP140007

TYPE: Building Code Appeal

SITE ADDRESS: 5029 23RD ST S ARL

PARCEL: 28019034

Permit Holder: WILLIAM B. LAWSON, JR.

TRANSACTION DATE: 01/19/2016

**TOTAL PAYMENT:\$** 

511.18

**TOTAL PAID FROM TRUST:**\$ **TOTAL PAID FROM CURRENCY:**\$

.00

TRUST TRANSLIST:

511.18

TRANSACTION LIST:

Туре

Method Description Amount

Payment

Check

19967\*LO

511.18

TOTAL:\$

511.18

TOTAL: \$

ACCOUNT ITEM LIST:

Description

Account Code

Current Pmts

BLDG: 2% VA Surcharge

Building Code Appeal

7712966560000000000000000 57032220072201000000000000

8.38 502.80 511.18

RECEIPT ISSUED BY: DPAULETTI

INITIALS: DAP

ENTERED DATE: 01/19/2016

TIME: 12:53 PM

TOTAL FEES:

\$511.18

**BALANCE DUE:** 

\$0.00

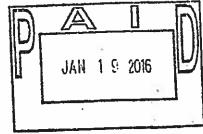
The 15% Indirect Cost Fee and 10% Automation Enhancement Fee has been applied to the permit fee.



To check the status of your permit, scan the QR Code or go to our website:

http://permits.arlingtonva.us

Survey: How are we doing? www.surveymonkey.com/s/isdgaacss2014q2



#### STATEMENT

#### Case Reference No. CE150807

In support of his application for appeal of the Violation Notice issued on December 28, 2015 in the above-referenced case, the Applicant states the following:

On December 28, 2015, a Violation Notice was issued to the Applicant citing a violation of Virginia Maintenance Code Sections 402.1, 403.1, 702.4 and 704.2 on December 22, 2015. The Notice was received by Attorney William B. Lawson, Jr., counsel for the Applicant on January 6, 2016.

On that same date, Attorney Lawson received Violation Notices with Case Reference Numbers CE153175, CE15376 and CE153178. Each of these Violation Notices was issued on December 28, 2015 for an alleged violation date of December 22, 2015. On that same date, Attorney Lawson received a Violation Notice with Case Reference Number CE153177 dated October 21, 2015 for an alleged Violation Date of October 20, 2015, relating to the same property.

## The Inspection Was Conducted without a Proper Warrant

The Applicant further objects to the Violation Notice on the grounds that the alleged violations cited are the result of an improper search of the property pursuant to an improperly obtained search warrant.

On December 17, 2015, a Building Inspection Warrant was issued pursuant to Virginia Code § 36-105. That Code Section states in pertinent part:

Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the

subject building or structure prior to seeking the issuance of an inspection warrant under this section.

The Affidavit in support of the Building Inspection Warrant stated that "the material facts constituting probably cause that the search should be made are that the inspection is necessary to investigate a suspected violation of the Building Code that poses an immediate and imminent threat to the health and safety of the owner, tenant or occupants of the building or structure, or the owner, occupant or tenant of a nearby building or structure based on the following evidence of a violation of such code:"

Arlington County Zoning Ordinance Article 15.2.1-converting a commercial building to a residential building without a Certificate of Occupancy. Arlington County Zoning OrdinanceArticle 17.1.A converting a commercial building to an unpermitted multifamily dwelling in a C-2 district.

The apartments do not have two egresses in case of a fire.

First, there is no allegation that any complaint being received "that a violation of the Building Code existed." Second, the allegations supporting the Building Inspection Warrant are allegations of an alleged Zoning Violation, not a suspected violation of the Building Code. There are, therefore, no material facts constituting probably cause for issuance of the Warrant, and therefore, the search conducted pursuant to the Warrant was an illegal and unreasonable search. The United States Supreme Court has long held that a warrantless search of a person's property for the purpose of conducting a building inspection violates that person's Fourth Amendment rights.

"We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. .. But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

Camara v. Municipal Court, 387 U.S. 523, 530 (1967).

Any findings by the inspector during the illegal search are "fruit of the poisonous tree," and as such cannot constitute the basis of the Violation Notice. The Violation Notice must be dismissed. Furthermore, the alleged violation of Virginia Maintenance Code Section 704.2 has been corrected. Smoke detectors have been installed in the units and are in good, working condition.

### The Property Has Always been a Residential Property

On information and belief, the subject property has always been a residential property. Any commercial activity has been conducted out of apartments in the property, and therefore should be grandfathered. The allegation that the property was "converted to Residential" is factually incorrect.

Finally, the allegation that the "apartments do not have two egresses" is not supportable as the property predates such requirements in the Virginia Uniform Statewide Building Code, and therefore should be grandfathered.

The Applicant reserves the right to supplement this statement as facts become available.

#### CE150807

For this violation notice, with the exception of the smoke detectors, the position of the Building Code staff is based upon the allegation that the property was improperly converted from commercial to residential without a building permit. This is a zoning question and the Owner has filed an appeal to the Board of Zoning Appeals. This is why the Owner requested a deferral which was denied by the Building Code staff. The applicant disagrees with this and submits that the Property has always been residential. The structure, when it was built, is obviously residential. From discussing this with a prior owner, we understand that the deli was never opened because a liquor license could not be secured. In addition, the sewing Certificates of Occupancy may have been home occupations.

When Mr. Jones purchased this Property it was being rented as four (4) residential units. He purchased the Property in 2005. The entire time that he owned the Property it was used as a 4-unit residential building. It strains credibility for the County to contend all of a sudden, a decade later, that this situation constitutes "an immediate and imminent threat to the health or safety of the tenant."

Sections 103.2 and 103.3 read as follows:

103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.

103.3 Continued approval. Notwithstanding any provision of this code to the contrary, alterations shall not be required to be made to existing buildings or structures which are occupied in accordance with a certificate of occupancy issued under any edition of the USBC.

Thus, the County is without authority to require that these alterations be made.

As to the specific violations:

Violation: Two (2) rooms in lower level are being used as bedrooms; do not have the

minimum requirement for light at the lower level.

Response: Rooms are not being used. Lack of light is not "an immediate and

imminent threat to the health and safety of the tenant."

Violation: Two (2) rooms in lower level are being used as bedrooms; do not have the

minimum requirement for ventilation.

Response: Rooms are not being used. Again, the current situation is not "an

immediate and imminent threat to the health and safety of the tenant."

Violation: Inadequate emergency escape opening (window too small and the window

sill too high from the finished floor) in the rooms at basement being used

as sleeping room.

Response: Rooms are not being used. Again, the current situation is not "an

immediate and imminent threat to the health and safety of the tenant."

Violation: Missing/defective smoke detectors in the units at the upper and lower

levels of the Property

Resolution: The smoke detectors have been installed and repaired as necessary.

WBL\D\7391

#### COMMONWEALTH OF VIRGINIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT State Building Codes Office and Office of the State Technical Review Board Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219 Tel: (804) 371-7150, Fax: (804) 371-7092, Email: alan.mcmahan@dhed.virginia.gov

APPLICATION FOR A	DMINISTRATATIVE	APPEAL
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Regulation Serving as Basis of Appeal (check one):
Regulation Serving as Basis of Appeal (check one):    Wind   Wind
Statewide Fire Prevention Code
☐ Industrialized Building Safety Regulations
Amusement Device Regulations
Appealing Party Information (name, address, telephone number and email address):
Robert Jones, 5604 Seminary Road, Alexandria, Virginia 22311 By: William B. Lawson, Jr., Attorney/Agent, blawson@wblawsonlaw.com Opposing Party Information (name, address, telephone number and email address of all other parties): 703-534 Arlington County, Virginia, Office of Code Enforcement 2100 Clarendon Blvd., Suite 700, Arlington, VA 22201 703-228-3232 Additional Information (to be submitted with this application)  Copy of enforcement decision being appealed Copy of record and decision of local government appeals board (if applicable and available) Statement of specific relief sought
CERTIFICATE OF SERVICE
I hereby certify that on the 11th day of ,2016, a completed copy of this application, including the
additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the
Office of the State Technical Review Board and to all opposing parties listed.
Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.
Signature of Applicant:
Name of Applicant: Robert Jones, By William B. Lawson, Jr., Attorney/Agent (please print or type)

## Statement of Support For Appeal by Robert Jones

On December 23<sup>rd</sup>, late in the afternoon, Arlington County executed on a search warrant and inspected Mr. Jones' Property at 5029 3<sup>rd</sup> Street S, Arlington, Virginia 22206. It is the belief of Mr. Jones that the timing of this was deliberate to place him at a disadvantage immediately prior to the Christmas holiday.

This inspection resulted in four (4) Violation Notices; one (1) for the Building Code and three (3) separate Maintenance Code violations (it also resulted in a zoning violation that is in a separate appeal process and a condemnation of two (2) units which required the immediate vacation of the units by the tenants). Again, it is the belief of Mr. Jones that serving him with three (3) separate violation notices for alleged maintenance code violations was deliberate to force him to pay three (3) filing fees.

There are numerous reasons why this decision by the Arlington Appeal Board to uphold the County is erroneous and should be overturned. Each reason will be outlined below.

In addition to this statement, we have enclosed copies of the following material that was available at the hearing:

- 1. The Application for Appeal;
- 2. The Appeal Hearings presented by Arlington County;
- 3. The written material presented by Robert Jones
- 4. The Building Inspection Warrant and the Affidavit for Building Inspection Warrant;
- 5. Resolution upholding the Code Enforcement Staff;
- 6. There was not a court reporter there and thus we cannot give you the oral testimony.

Our grounds of appeal and arguments of errors are as follows:

- Upon information and belief, this board has never overruled the position of the
  County. It certainly has not done so in the appeals that have been presented by the
  undersigned. The Arlington Appeals Board, either consciously or unconsciously, is
  giving the County position an improper presumption of being correct.
- The search warrant was improperly obtained.
   On December 17, 2015, a Building Inspection Warrant was issued pursuant to
   Virginia Code §36-105. That Code Section states in pertinent part:

Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

The Affidavit in support of the Building Inspection Warrant stated that "the material facts constituting probable cause that the search should be made are that the inspection is necessary to investigate a suspected violation of the Building Code that poses an immediate and imminent threat to the health and safety of the owner, tenant or occupants of the building or structure, or the owner, occupant or tenant of a nearby building or structure based on the following evidence of a violation of such code:"

Arlington County Zoning Ordinance Article 15.2.1-converting a commercial building to a residential building without a Certificate of Occupancy. Arlington

County Zoning Ordinance Article 17.1.A converting a commercial building to an unpermitted multifamily dwelling in a C-2 district.

The apartments do not have two egresses in case of a fire.

First, there is no allegation that any complaint being received "that a violation of the Building Code existed." Second, the allegations supporting the Building Inspection Warrant are allegations of an alleged Zoning Violation, not a suspected violation of the Building Code. There are, therefore, no material facts constituting probable cause for issuance of the Warrant, and therefore, the search conducted pursuant to the Warrant was an illegal and unreasonable search. The United States Supreme Court has long held that a warrantless search of a person's property for the purpose of conducting a building inspection violates that person's Fourth Amendment rights.

"We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. ... But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

Camara v. Municipal Court, 387 U.S. 523, 530 (1967).

Any findings by the inspector during the illegal search are "fruit of the poisonous tree," and as such cannot constitute the basis of the Violation Notice. The Violation Notice must be dismissed.

3. There was no immediate and imminent threat to the health or safety of the tenants.

The County contends that it knew about the alleged violations "in May" yet it waited many months to proceed. The County's own action in not acting promptly demonstrates that there was not an "immediate and imminent threat."

- The County staff, and by affirming the County staff the Arlington Appeals Board, made an improper zoning determination.
  - The allegation that the Property was illegally converted from Commercial Use to Residential Use is a zoning question. Robert Jones, numerous times, requested that this be deferred until the alleged Zoning Violation could be heard by the Arlington Board of Zoning Appeals. This was denied and the Arlington Appeals Board acted and held that it was an illegal conversion. This was done in the face of evidence that the Property, when built, was not in Arlington County and that the current C-2 zoning allowed multi-family use by-right in the past.
- 5. Assuming that there had been an illegal conversion from Commercial to Residential, the Certificates of Occupancy that the County relied upon were all for the lower floor.
  There was no evidence whatsoever that the upper floor was ever used commercially.
- Any and all evidence that the Property was used commercially and was an illegal conversion was speculation by County staff.

As stated before, multi-family uses were allowed by-right in the C-2 zoning category. Based upon the undersigned's experience, Certificates of Occupancy were often misplaced, lost, or even destroyed by the County. In addition, the structure was built when this property was not in Arlington County. Robert Jones submitted information from prior owners that they sought to open a deli but were unable to do so because they could not secure a liquor license. The prior owner also believed that the "sewing" Certificates of Occupancy were obtained by a former owner who resided there.

 The Arlington Appeals Board illegally and improperly shifted the burden of proof to Robert Jones.

Instead of requiring the County to prove its case, the Arlington Appeals Board stated that Robert Jones had to prove the County allegations were not correct. This is a gross violation of due process and places the Property Owner, in this case Robert Jones, in a no-win situation. He is required to prove his case when it is commonly known that the County in the past misfiled, lost and even destroyed records such as Certificates of Occupancy.

In addition, because of the age of this property, former owners who could explain what happened in the past are deceased. And finally, this house was not built when the Property was in Arlington County. It is total speculation that it was not constructed as a multi-family structure when it was in Fairfax County and/or Alexandria City.

For these reasons, Robert Jones respectfully asks that the honorable body overturn the decision of the Arlington Appeals Board upholding the Violation Notices or, at a minimum, limit the action of the Arlington Appeal Board to the lower floor.

ROBERT JONES
By Counsel

William B. Lawson, Jr., Esquire (VSB #22240)

THE LAW OFFICE OF WILLIAM B. LAWSON, P.C.

6045 Wilson Boulevard, Suite 100

Arlington, Virginia 22205

(703) 534-4800

(703) 534-8225 (facsimile)

Counsel to Defendant

### Combined Documents Submitted by Both Parties

### BUILDING INSPECTION WARRANT

Inspected. Commonwealth of Virginia VA. CODE § 36-105
ANY ZONING / LODE ENGREGMENT

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OF THE ARLINGARD

You are hereby commanded in the name of the Commonwealth to forthwith inspect:

LOCATION DESCRIPTION OF PLACE TO BE INSPECTED 73.3

for the gurpose of determining whether violations of the Building Code exist that would pose an immediate and imminent threat to the health and safety of the owner, tenant, or occupants of the building or sencture, or the owner, occupant, or tenant of a nearby building or structure.

I, the undersigned have found probable cause and believe that, based on statements contained in the LONING INSPECTENT ď AFFIANT Asan SHORA attached affidavit swom to by ....

- which is hereby incorporated by reference:
- protection of life and property of the owner, tenant, or occupants of the building or 1. the inspection is necessary to insure compliance with the Building Code for the structure or the owner, occupant, or tenant of a nearby building or structure.
- the local building official or his agent has made reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking issuance of this warrant. તાં

12/17 (2015 DATE AND TIME

### BUILDING INSPECTION WARRANT

### COMMONWEALTH OF VIRGINIA

In re/V.

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FORM DC-391 (MASTER, PAGE ONE OF TWO) 07/14

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FORM DC-391 (MASTER, PAGE TWO OF TWQ107/01

# AFFIDAVIT FOR BUILDING INSPECTION WARRANT Commonwealth of Virginia, va Code § 46-105

The undersigned Applicant states under oath that:

To determine compliance with the Building Code or regulations and standards adopted purguant thereto, an inspection warrant is requested for an inspection of a building or structure, subject to the Building Code. located at and as described below:

CONTINUED ON ATTACHED SHEET

- The inspection is to be done to gather evidence of a particular suspected violation of the Building Code on regulations and standards adopted pursuant thereof.
- 3. The material facts constituting probable cause that the search should be made are that the inspection is necessary to investigate a suspected violation of the Building Code that poses an immediate and imminent threat to the health and safety of the owner, tenant, or occupants of the building or structure, or the owner, occupant, or tenant of a nearby building or structure based on the following evidence of a violation of such code:

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### AFFIDAVIT FOR BUILDING INSPECTION WARRANT

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TTE

FORM DC-390 (MASTER, PACE ONE OF TWO) 10/14

In addition to the above, the following situation exists:

[ ] Consent to inspect has been sought and refused by Kobeck Jones

who is property \_ Own nell

[ ] I have personal knowledge of the facts set forth in this affidavit AND/OR

I was advised of the facts set forth in this affidavit, in whole or in part, by one or more other person(s). The credibility of the person(s) providing this information to me and/or the rollability of the information provided may be determined from the following facts: A temmet in May invited me into

received was response inspertor Flor from Coole a

The statements above are true and acceptate to the best of my knowledge and belief.

Lange Ingret

aran B Shore

Subscribed and sworn to before me this day.

12 (17 (2015 11:52 A)

(AM) 2 JUDGF. [P. MAGISTRATE

FORM DC-390 (MASTER, FAGE TWO OF TWO) 117 14

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5029 S. 23RD Street, Arlington, VA

RE: Appeals APP16001, 0002, 0003 and 0004 filed by Robert Jones (the "Appeals")

Dear Mr. Amiri,

The purpose of this letter is to request a deferral of the hearing of the Appeals until after the Board of Zoning Appeals has heard a separate appeal of the Zoning Violation Notice.

All of the Appeals arise from violation notices based upon the allegations that the building was illegally converted from commercial to residential. Our research, however, has indicated that might not be accurate. The Certificates of Occupancy that the County is relying upon deal only with the first (14) floor. So, at least the top floor has been continually used as residential. Michael Stevens, the architect we have retained, has indicated that there will be different building code ramifications depending upon the BZA decision.

Mr. Jones has no residents living in the two (2) ground floor units and all safety issues have been complied with, such as installing smoke detectors, etc.

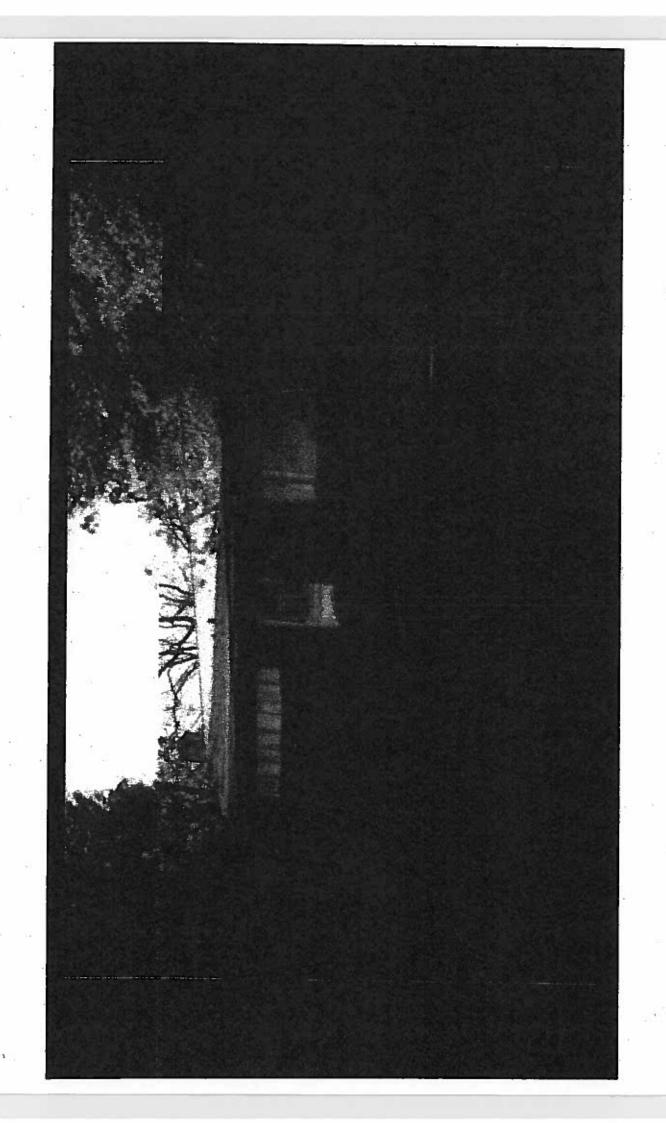
For this reason, we respectfully request a deferral of these appeals.

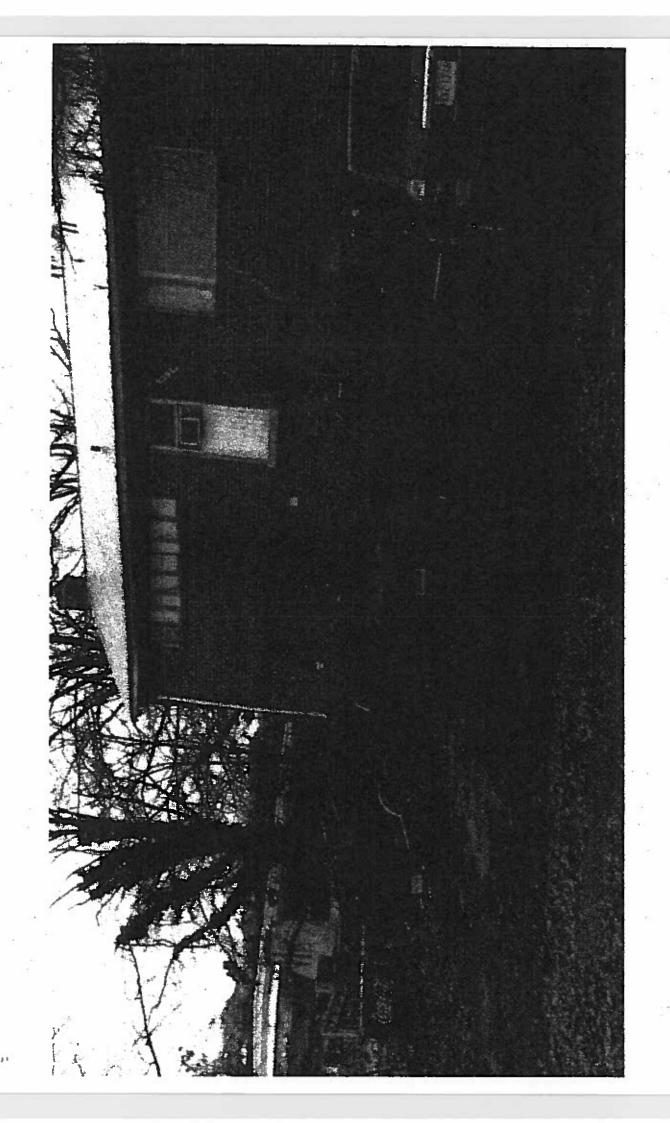
Very truly yours,

William B. Lawson, Jr.

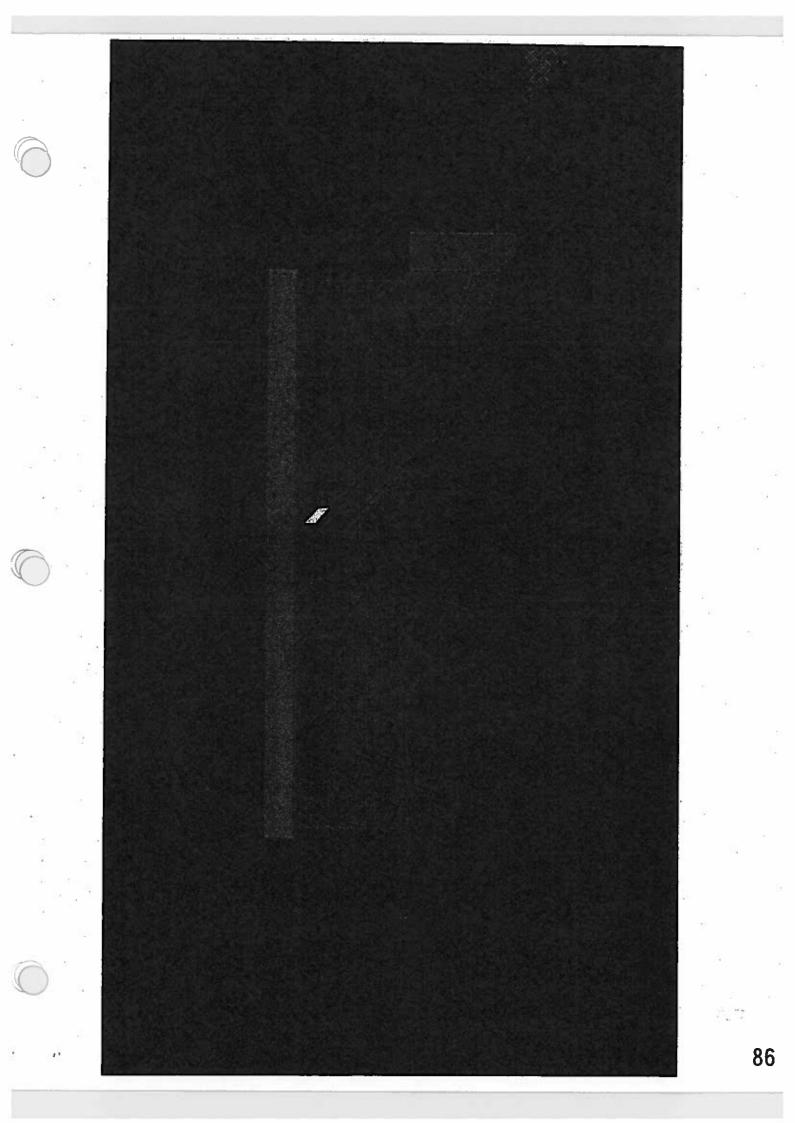
cc: Robert Jones

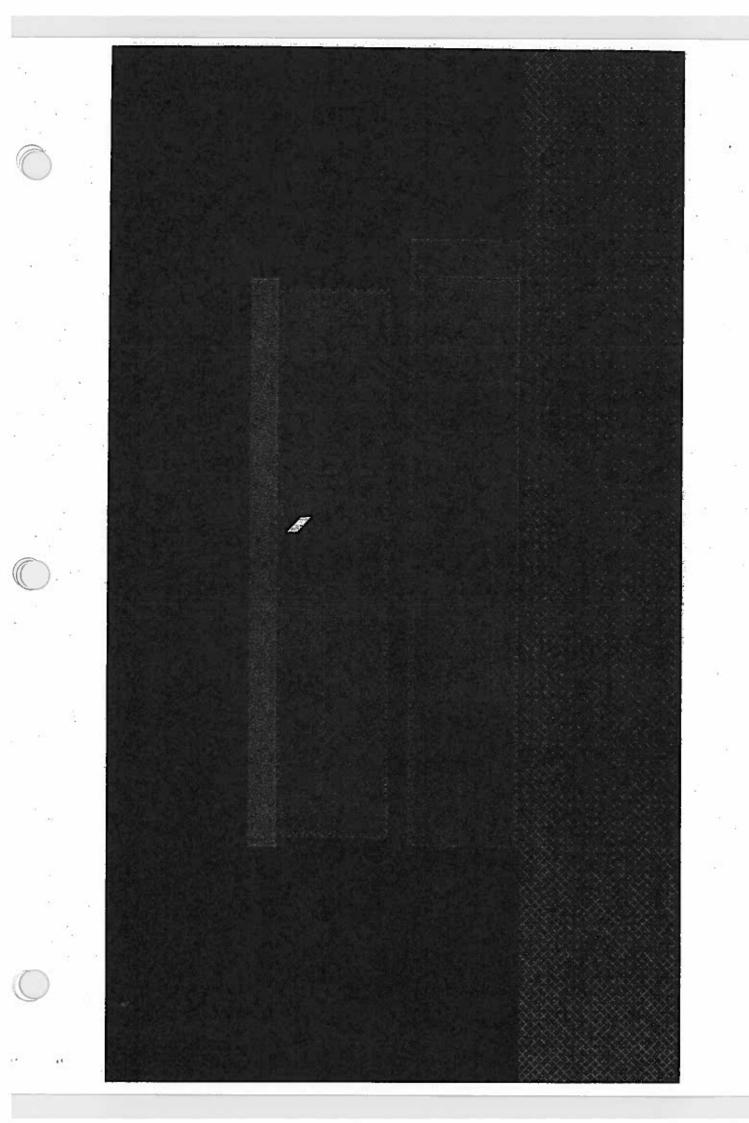
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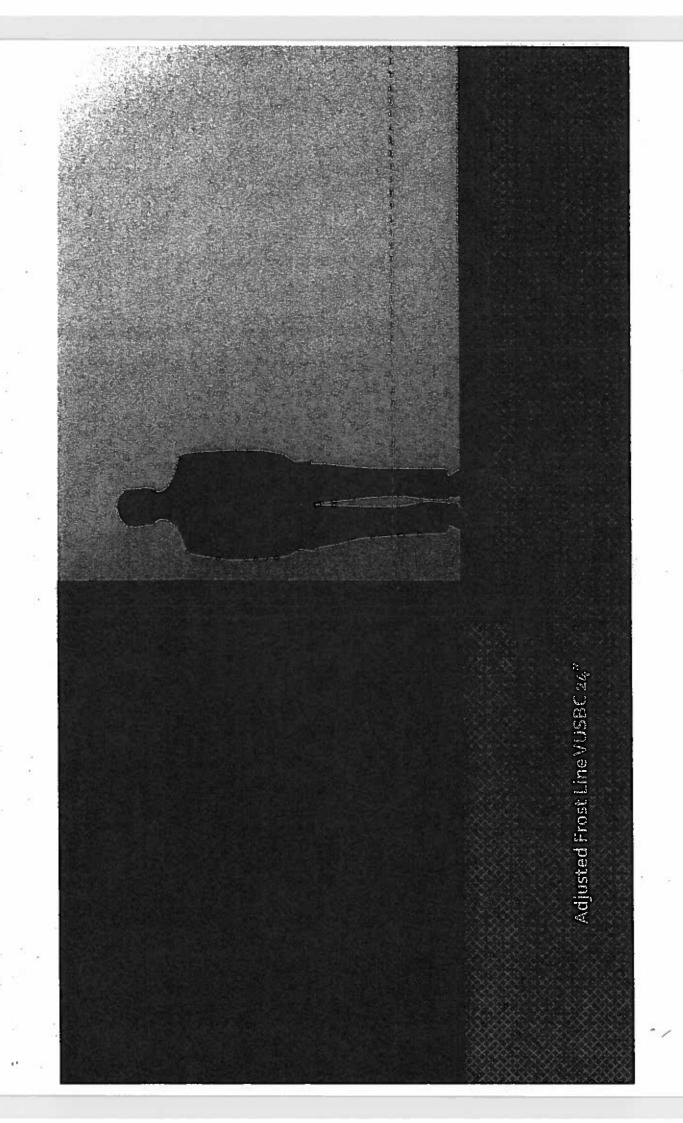






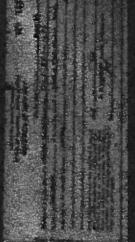






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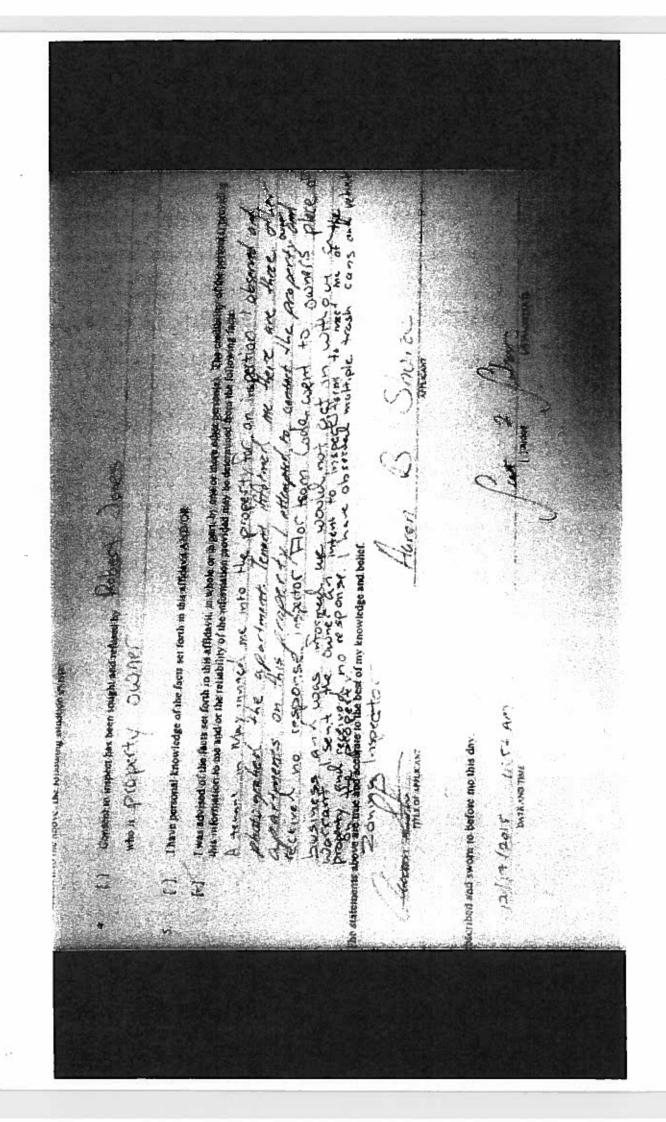
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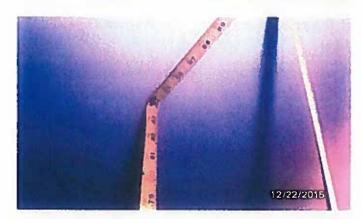
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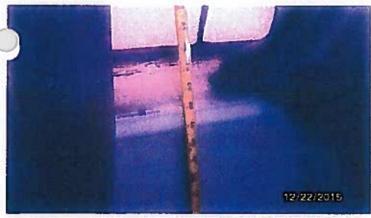


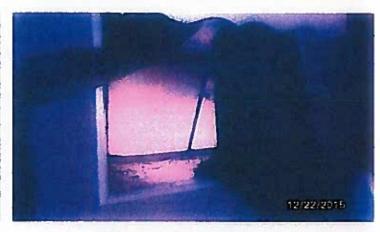








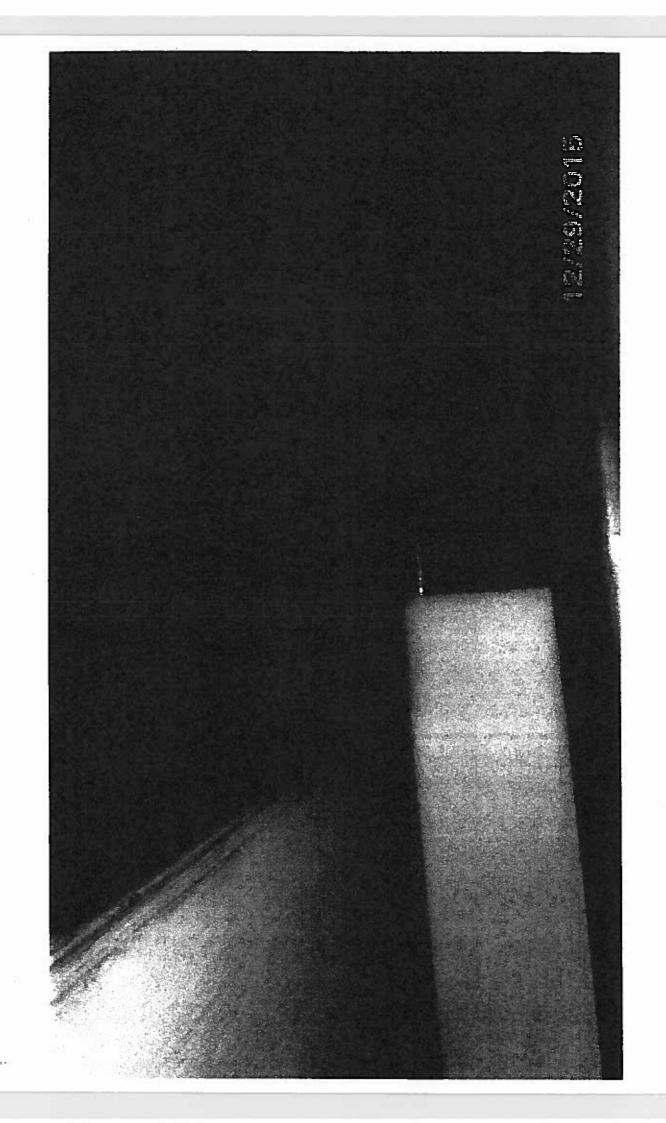














### LOCAL BOARD OF BUILDING CODI

### Resolution

÷3.	WHEREAS, the Arlington County Local Board of Building Code appointed to resolve disputes arising out of the enforcement of the virginia Uniform Statewide Building Code.	
	WHEREAS, an appeal has been filed and brought to the attention of the board; and	
	WHEREAS, a hearing has been held to consider the aforementioned appeal; and	
	WHEREAS, the board has fully deliberated this matter; now, therefore, be it	
F	RESOLVED, that in the matter of	
A	Appeal No(s). APP160001, APP160002, APP16003, APP16004	
Ír	RE: William B. Lawson, Jr., representing Robert Jones V Arlington County, VA	
The decis	sion of the county is hereby <u>UPHELD</u> , as per conditions set out below:	
10,		
		_
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Date;	2/23/16	_
Signature:	Clifton R! Gruver, Jr. Chairman of Arlington County Local Board of Building Code of Appeals	

Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT State Building Codes Office and Office of the State Technical Review Board Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219 Tel: (804) 371-7150, Fax: (804) 371-7092, Email: alan.mcmahan@dhcd.virginia.gov

### APPLICATION FOR ADMINISTRATATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):
W Uniform Statewide Building Code and the Virginia Maintenance Code
Statewide Fire Prevention Code
Industrialized Building Safety Regulations
Amusement Device Regulations
Appealing Party Information (name, address, telephone number and email address):  Robert Jones, 5604 Seminary Road, Alexandria, Virginia 22311  By: William B. Lawson, Jr., Attorney/Agent, blawson@wblawsonlaw.com  Opposing Party Information (name, address, telephone number and email address of all other parties): 703-534-  Arlington County, Virginia, Office of Code Enforcement  2100 Clarendon Blvd., Suite 700, Arlington, VA 22201 703-228-3232  Additional Information (to be submitted with this application)  Company for few submitted with this application)
<ul> <li>Copy of enforcement decision being appealed</li> <li>Copy of record and decision of local government appeals board (if applicable and available)</li> <li>Statement of specific relief sought</li> </ul>
CERTIFICATE OF SERVICE
I hereby certify that on the day of 2016, a completed copy of this application, including the
additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the
Office of the State Technical Review Board and to all opposing parties listed.
Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.
Signature of Applicant:
Name of Applicant: Robert Jones, By William B. Lawson, Jr., Attorney/Agent
IDICASE DITH OF IVACI

### **AFFIDAVIT**

The undersigned, being first duly sworn, does hereby state the following:

- 1. That the undersigned did go to the Fairfax County Department of Planning and Zoning, Site and Addressing Division, and request all records for 5029 23<sup>rd</sup> Street, South, for the time period prior to June 21, 1955 when the property was still a part of Fairfax County.
- 2. The undersigned was advised by the Fairfax County employee working at the Site and Addressing counter that to the best of her knowledge and belief, all records relating to a property that was conveyed to another jurisdiction were either delivered to the new jurisdiction or destroyed. Fairfax County has no records of the development, building or occupancy permits of the structure located on 5029 23<sup>rd</sup> Street, South.

Signed this add day of \_\_\_\_\_\_\_\_, 2016.

Name: Delores E. Payne

Title: Paralegal

COMMONWEALTH OF VIRGINIA.

COUNTY OF ARLINGTON, to-wit:

Subscribed, swom and acknowledged to before me this 28 day of Market, 2016, by Delores E. Payne, Paralegal for the Law Office of William B. Lawson, P.C.

Notary Public

My Commission Expires: ///30/20/9

My Commission Number: #7648756

JEANNE ALISON HUSKIN LAPAĞLIA NOTARY PUBLIC REG. # 7648758 COMMONWEALTH OF VIRGINIA MY COMMISSION EXPIRES NOVEMBER 30, 2019

### **AFFIDAVIT**

The undersigned, being first duly sworn, does hereby state the following:

- 1. That the undersigned did speak to Peter Leiberg, Zoning Manager, Department of Planning and Zoning, Land Use Services, City of Alexandria, and request all records for 5029 23<sup>rd</sup> Street, South, for the time period prior to December 20, 1965, when the property was still a part of the City of Alexandria.
- 2. The undersigned was advised by Mr. Leiberg that to the best of his knowledge and belief, there are no records relating to the property in the City of Alexandria's Planning and Zoning Department. He has no knowledge as to whether any documents were conveyed to the City of Alexandria when the property was conveyed from Fairfax County, or if the City of Alexandria conveyed any records of the property when it was conveyed to Arlington County.

Signed this 2 day of Much, 2016.

Name: Delores E. Payne

Title: Paralegal

COMMONWEALTH OF VIRGINIA,

COUNTY OF ARLINGTON, to-wit:

Subscribed, sworn and acknowledged to before me this 28 day of March, 2016, by Delores E. Payne, Paralegal for the Law Office of William B. Lawson, P.C.

Alim Though. Notary Public

My Commission Expires: 1/30/2019

My Commission Number: # 7648756

JEANNE ALISON HUSKIN LAPAGLIA

NOTARY PUBLIC

REG. # 7648756

COMMONWEALTH OF VIRGINIA

MY COMMISSION EXPIRES NOVEMBER 30, 2019

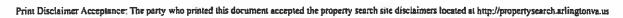
### 28-019-034 5029 23rd ST S ARLINGTON VA 22206

### General Information

Owner		Legal Description
JONES ROBERT		LOT 113 SEC 2 CLAREMONT DEV CORP 8018 SQ FT
Maiting Address PO BOX 6664 ARLINGTON VA 22206		Trade Name DWELLING
Year Built 1955	Units N/A	EU# N/A
Property Class Code 520-SFD/Comm Zone no site plan	<b>Zoning</b> C-2	Lot Size 8018
Neighborhood# 980000	Map Book/Page 093-01	<b>Polygon</b> 28019034
Site Plan	Rezoning	Tax Exempt
N/A	N/A	No

### Assessment History

Effective Date	Change Reason	Land Value	Improvement Value	Total Value	CHARLES SEL
1/1/2015	01- Annual	\$481,100	\$1,000	\$482,100	
1/1/2014	01- Annual	\$481,100	\$1,000	\$482,100	
1/1/2013	01- Annual	\$481,100	\$1,000	\$482,100	
1/1/2012	01- Annual	\$481,100	\$1,000	\$482,100	- 1
1/1/2011	01- Annual	\$442,200	\$1,000	\$443,200	- 4
1/1/2010	01- Annual	\$442,200	\$1,000	\$443,200	1
1/1/2009	01- Annual	\$521,200	\$1,000	\$522,200	
1/1/2008	01- Annual	\$521,200	\$1,000	\$522,200	
1/1/2007	01- Annual	\$481,100	\$1,000	\$482,100	1
1/1/2006	01- Annual	\$441,000	\$1,000	\$442,000	1



### 28-019-034 5029 23rd ST S ARLINGTON VA 22206

### Property Sales History

Grantee	Sales Date	Sales Price	Sales Code	Deed Book / Page #	Deed Doc ID#
JONES ROBERT	4/28/2005	\$500,000		3834/1130	
TOV LLC	11/7/2001	\$265,000		3212/1978	
GERBERICH PAUL H	1/1/1965	\$0		1609/0462	
2	1/1/1900	\$0			

Neighborhood 980000 Sa	ales between 7.	//1/2013 an	d 12/31/2015
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RPC	Address	Sales Date	Sales Price	Sales Code	Deed Book / Page #	Deed Doc ID#
31-020-001	3440 22nd ST S	11/23/2015	\$0	F-Multiple RPCs Not Market Sal	1	20150100026636
31-020-002	22nd ST S	11 <b>/2</b> 3/2015	\$0	F-Multiple RPCs Not Market Sal	1	20150100026636
29-019-021	S QUINCY ST	11/20/2015	\$45,000,000		1	20150100025900
29-019-022	2900 S QUINCY ST	11/20/2015	\$45,000,000		1	20150100025900
23-041-007	3401 COLUMBIA PIKE	9/15/2015		4-Multiple RPCs, Not A Coded S	1	20150100020900
23-041-011	S LINCOLN ST	9/15/2015	\$4,800,000	4-Multiple RPCs, Not A Coded S	1	20150100020900
34-027-052	JEFFERSON DAVIS HWY	8/3/2015	\$12,900,000		1	20150100017520
34-027-550	JEFFERSON DAVIS HWY	7/16/2015	\$15,000	M-Multiple RPCs Land Sale	1	20150100017519
34-027-551	JEFFERSON DAVIS HWY	7/16/2015	\$0	F-Multiple RPCs Not Market Sal	1	20150100016101
34-027-553	S BALL ST	7/16/2015	\$0	F-Multiple RPCs Not Market Sal	1	20150100016101
34-027-554	3500 S CLARK ST	7/16/2015	\$15,000	M-Multiple RPCs Land Sale	1	20150100017519
31-034-003	2645 SHIRLINGTON RD	7/1/2015	\$9,756,841	4-Multiple RPCs, Not A Coded S	1	20150100014468
31-034-042	2633 SHIRLINGTON RD	7/1/2015	\$9,756,841	4-Multiple RPCs, Not A Coded S	1	20150100014468
24-014-001	301 S GLEBE RD	5/18/2015	\$0	5-Not Market Sale	1	20150100011334
28-031-002	4965 10th STS	5/16/2015	\$0	W-Will / R.O.S.	X141/2583	
38-020-009	2920 S GLEBE RD	4/17/2015	\$2,100,000		1	20150100007628
23-040-009	3507 COLUMBIA PIKE	4/9/2015	\$0	5-Not Market Sale	1	20150100006940
29-015-017	4820 31st ST S	2/20/2015	\$5,166,000		4822/0844	
29-002-009	2710 S NELSON ST	2/6/2015	\$11,750,000	)	4820/1527	
32-003-007	2602 COLUMBIA PIKE	1/20/2015	\$4,200,000		4816/0996	
23-037-007	4707 COLUMBIA PIKE	1/5/2015	\$3,257,500	4-Multiple RPCs, Not A Coded S	4814/0740	}
23-037-008	COLUMBIA PIKE	1/5/2015	\$3,257,500	4-Multiple RPCs, Not A Coded S	4814 <b>/</b> 0740	
23-037-009	989 S BUCHANAN ST	1/5/2015	\$3,257,500	4-Multiple RPCs, Not A Coded S	4814/0740	
26-001-160	1117 S MONROE ST	1/2/2015	\$360,000	L-Land Sale	4813/1807	
32-001-033	2310 COLUMBIA PIKE	1/1/2015	\$0	5-Not Market Sale	1	20150100008392
31-025-052	3022 22nd ST S	12/23/2014	\$0	W-Will/R.O.S.	X139/0011	
31-023-001	2244 SHIRLINGTON RD	11/3/2014	\$0	5-Not Market Sale	4804/0058	
31-023-002	S KENMORE ST	11/3/2014	\$0	F-Multiple RPCs Not Market Sal	4804/0062	
31-023-003	S KENMORE ST	11/3/2014	\$0	5-Not Market Sale	4804/0053	
31-023-004	2221 S KENMORE ST	11/3/2014	\$0	F-Multiple RPCs Not Market Sal	4804/0062	
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P 1 of 2

· Central Data Layers - 45

Notices se Map Layers E Results (1) Show Legend

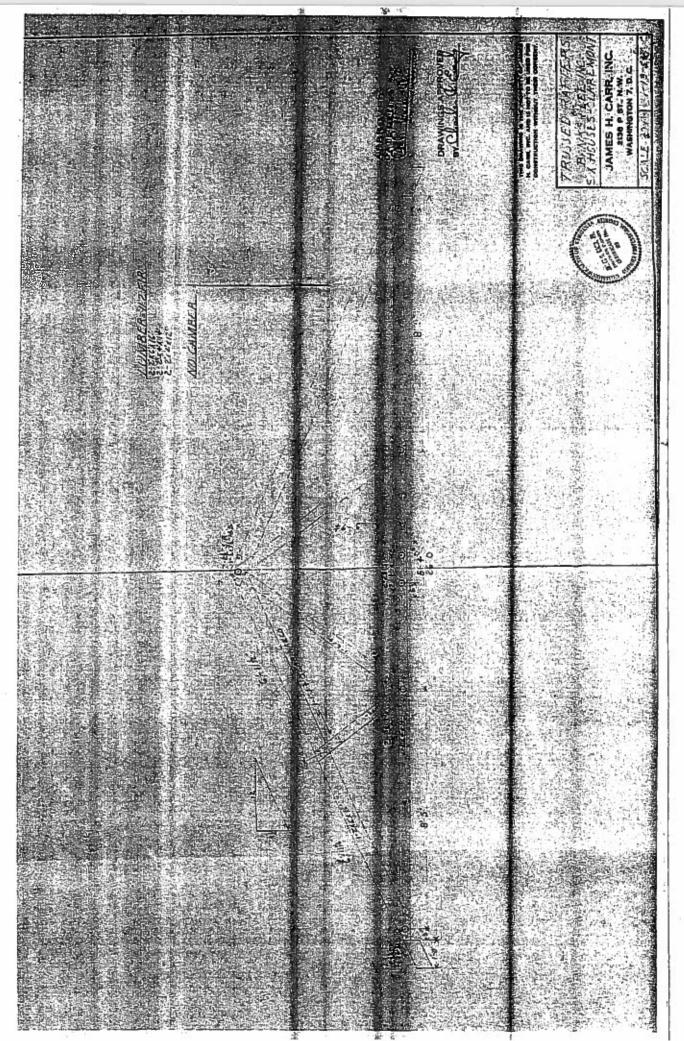
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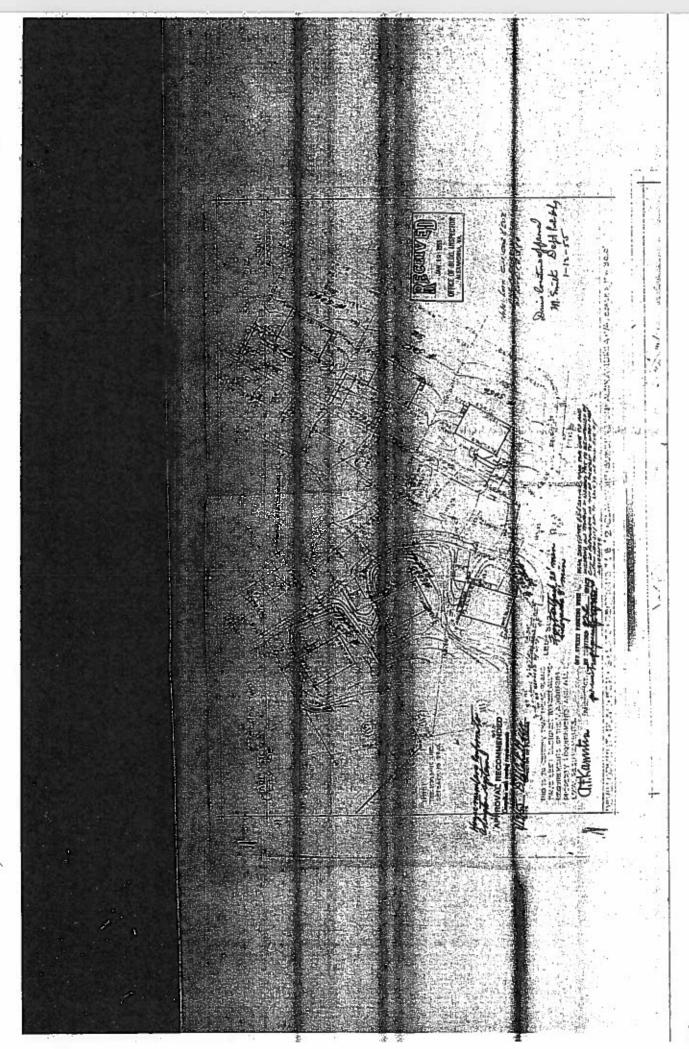
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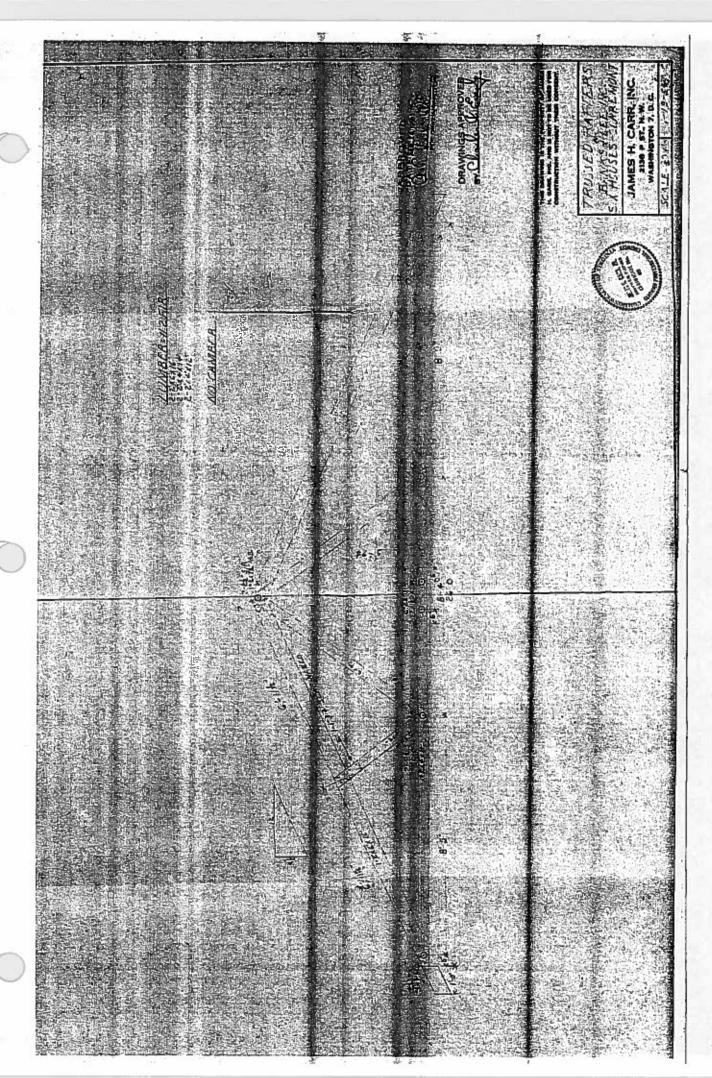
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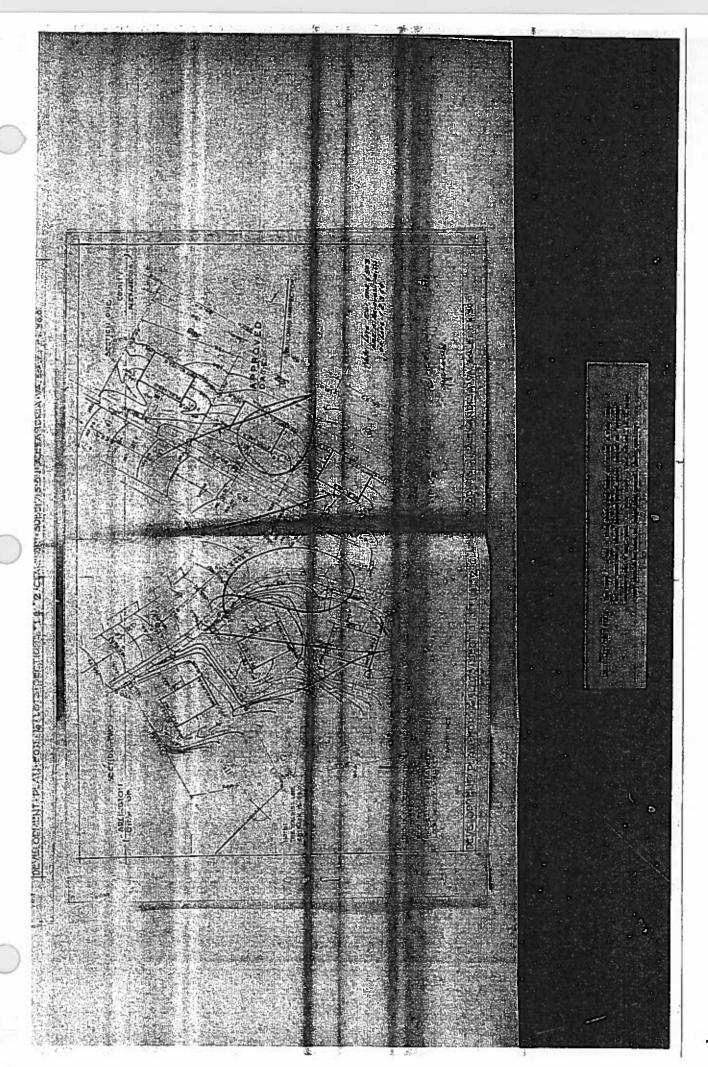
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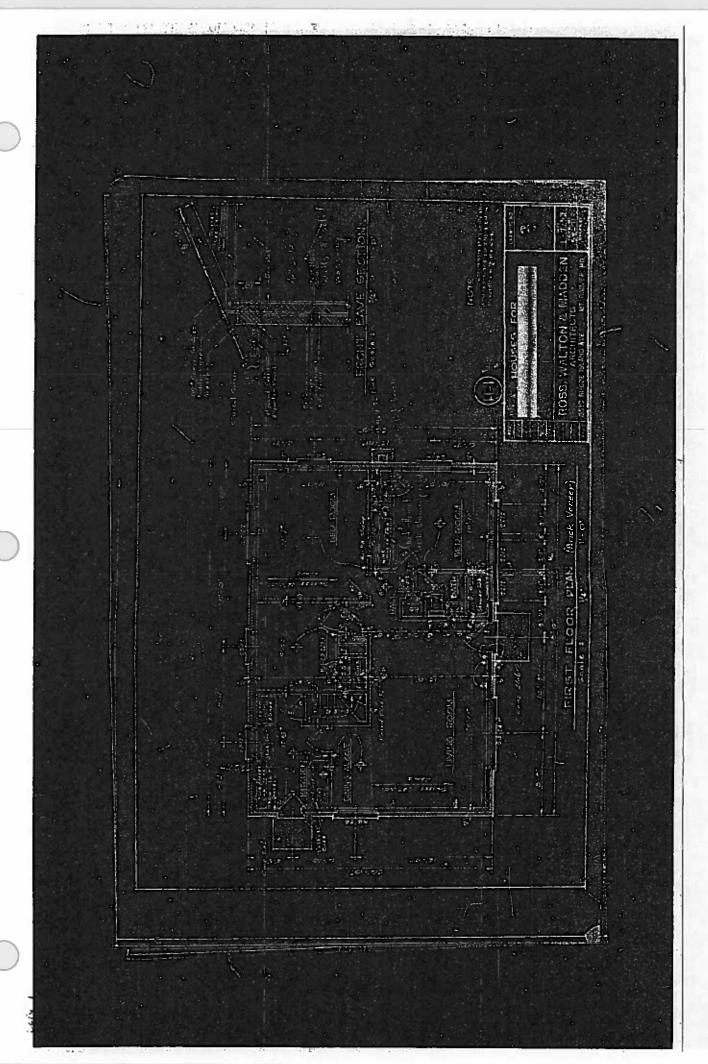
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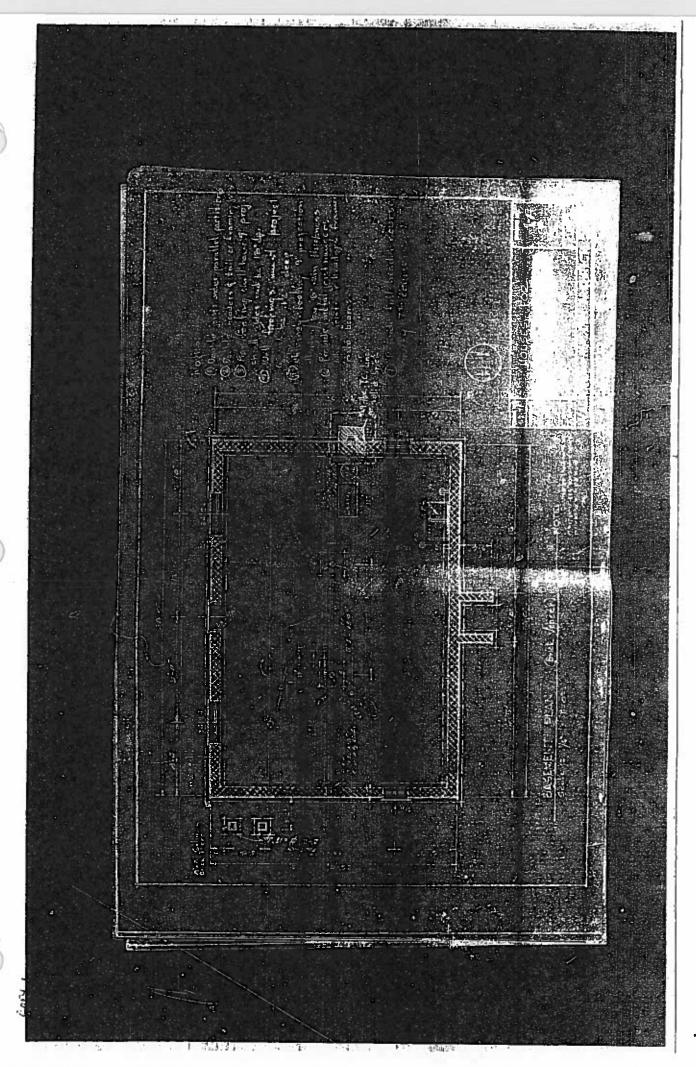


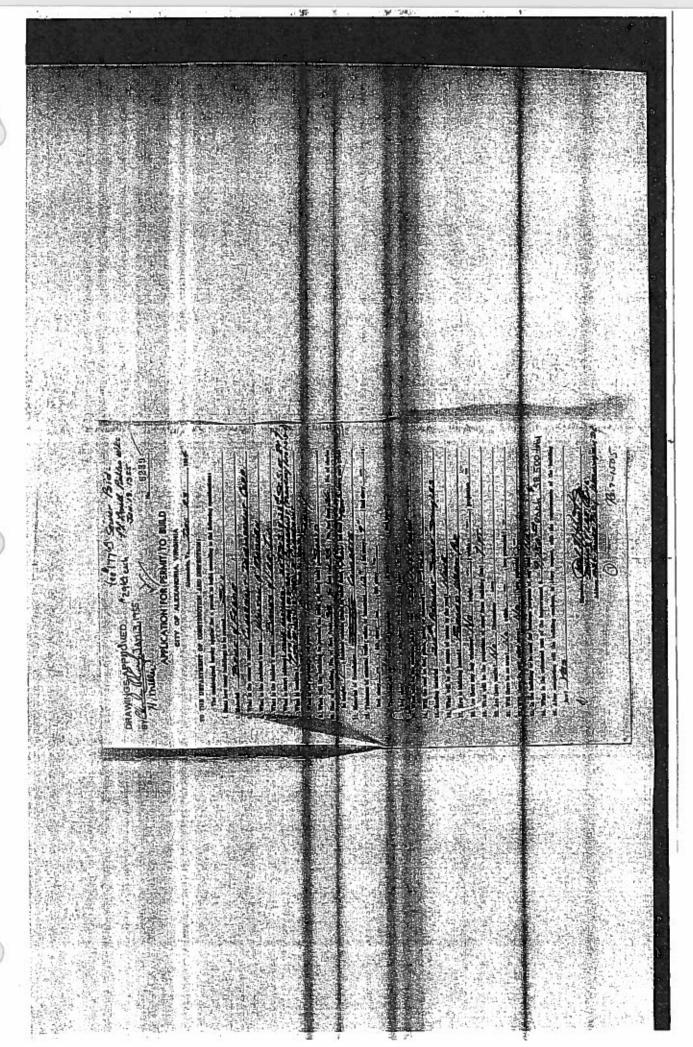


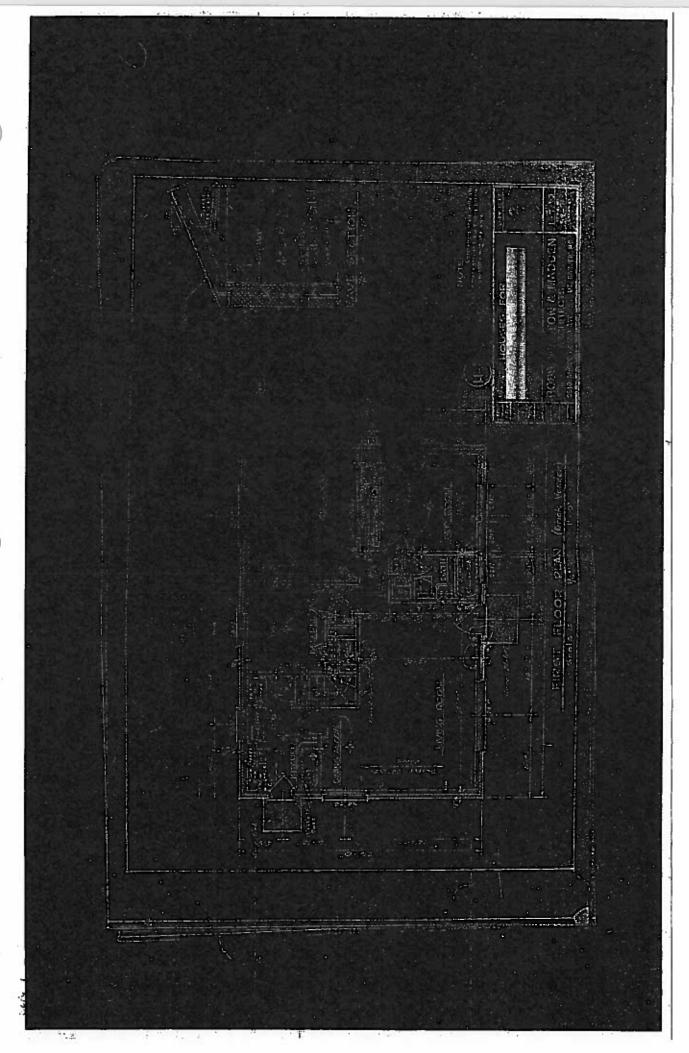


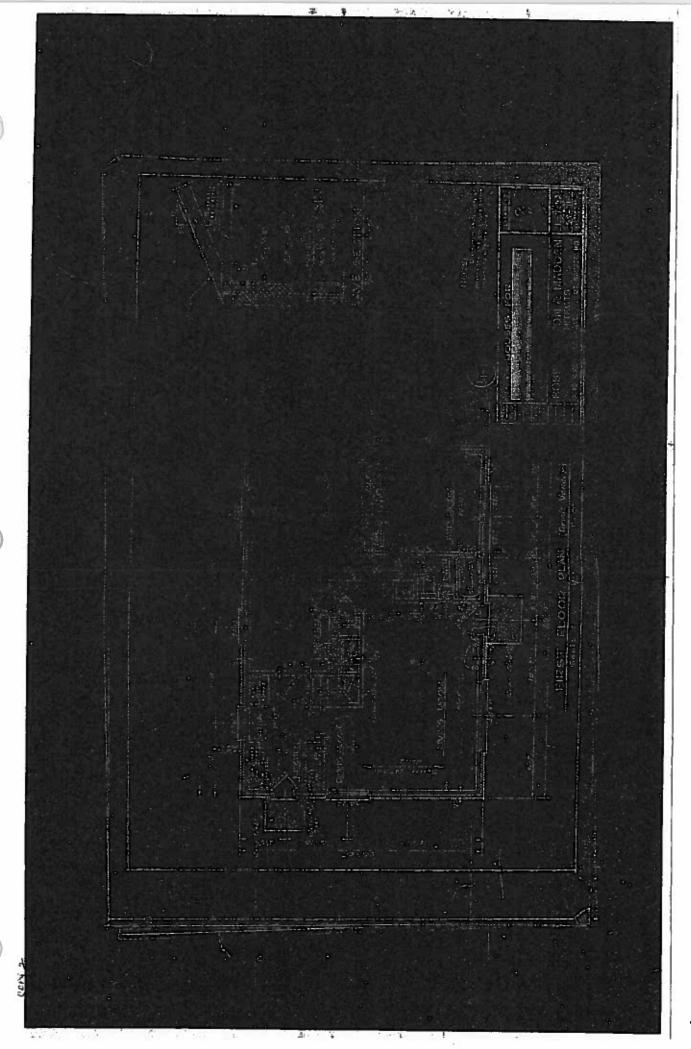


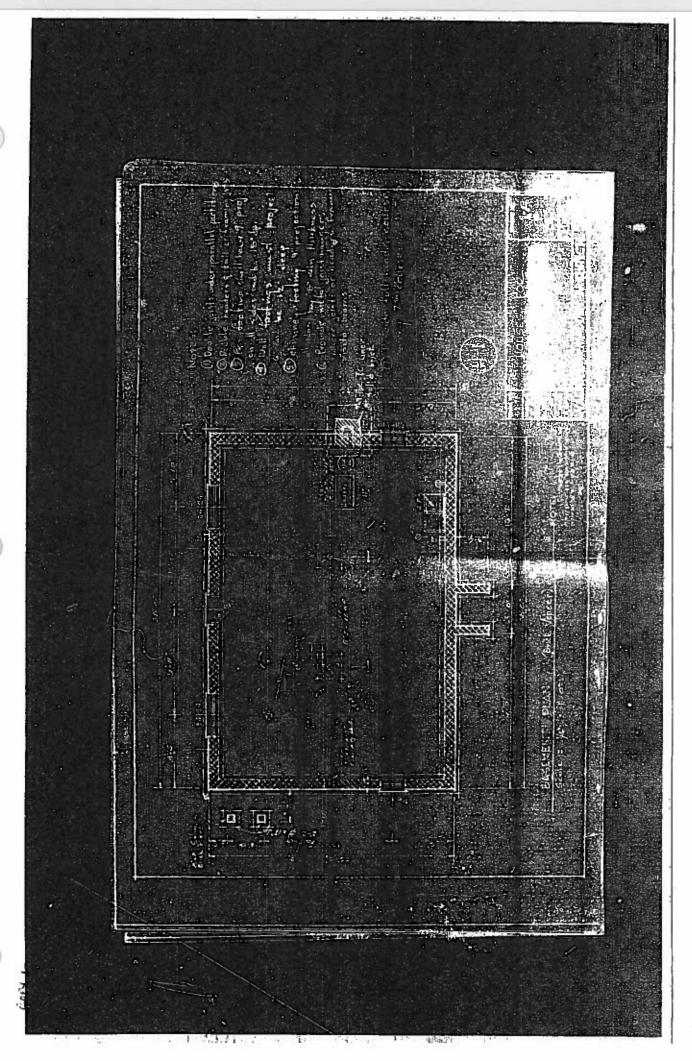


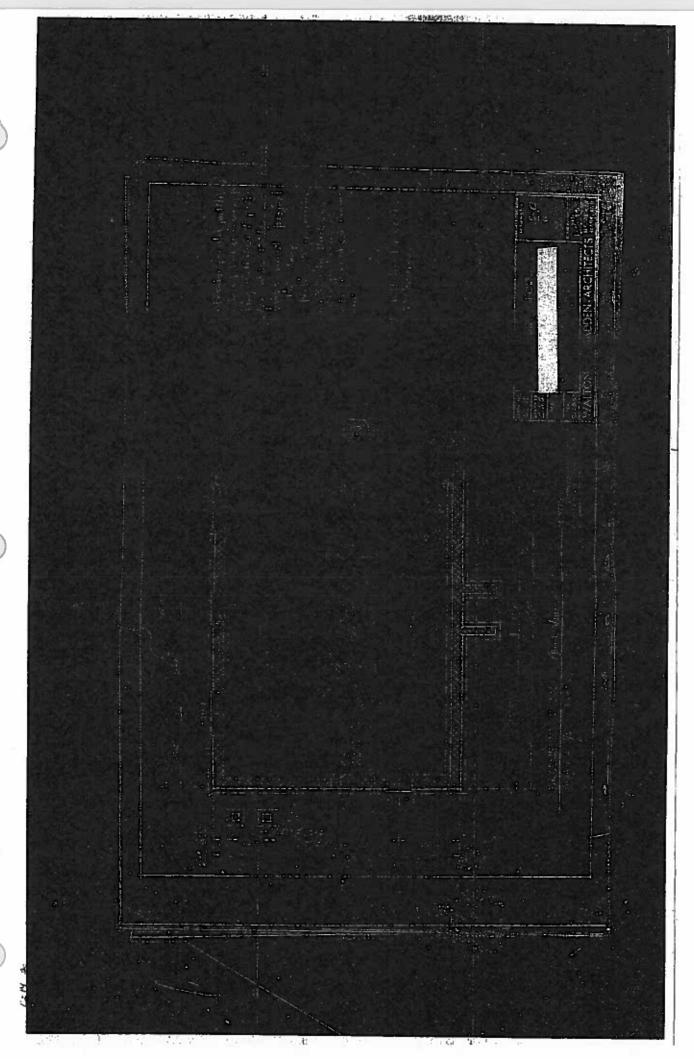


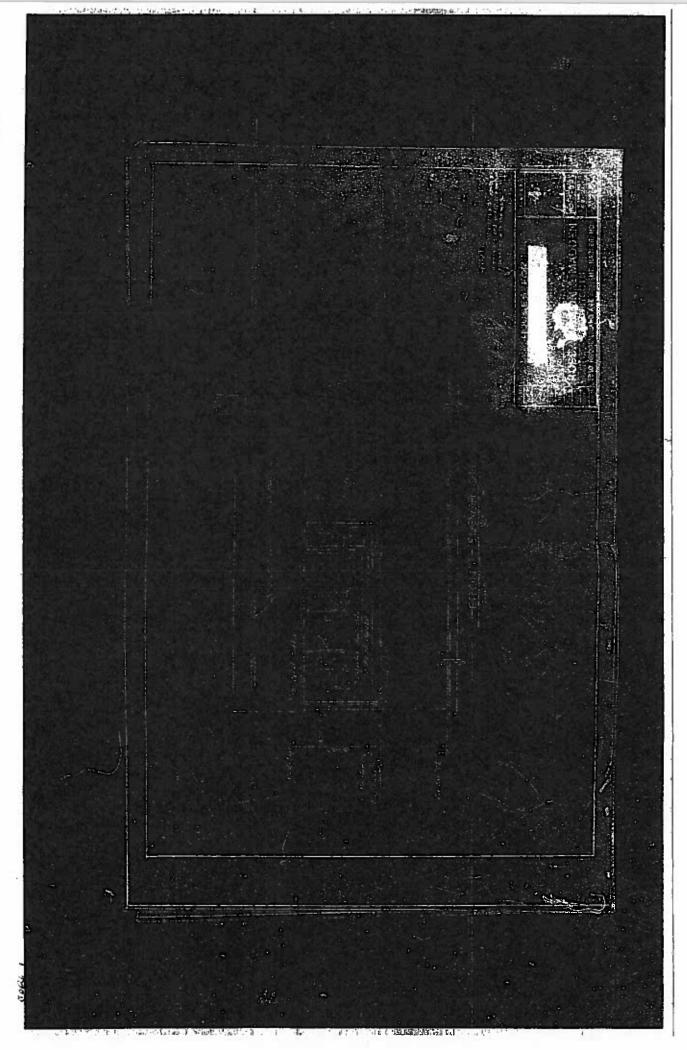


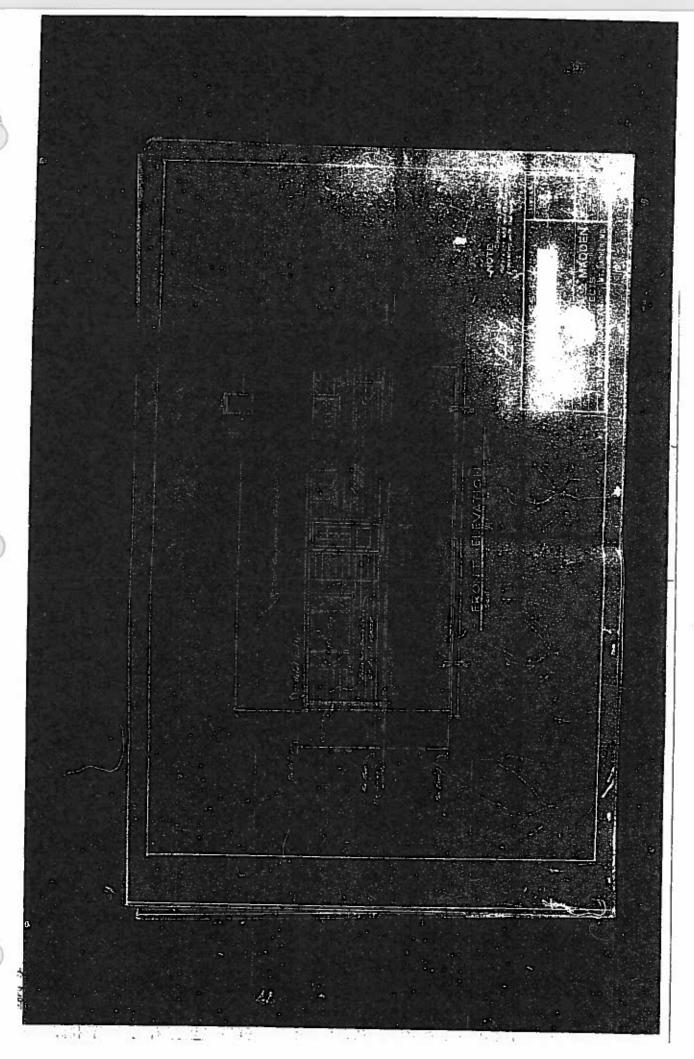


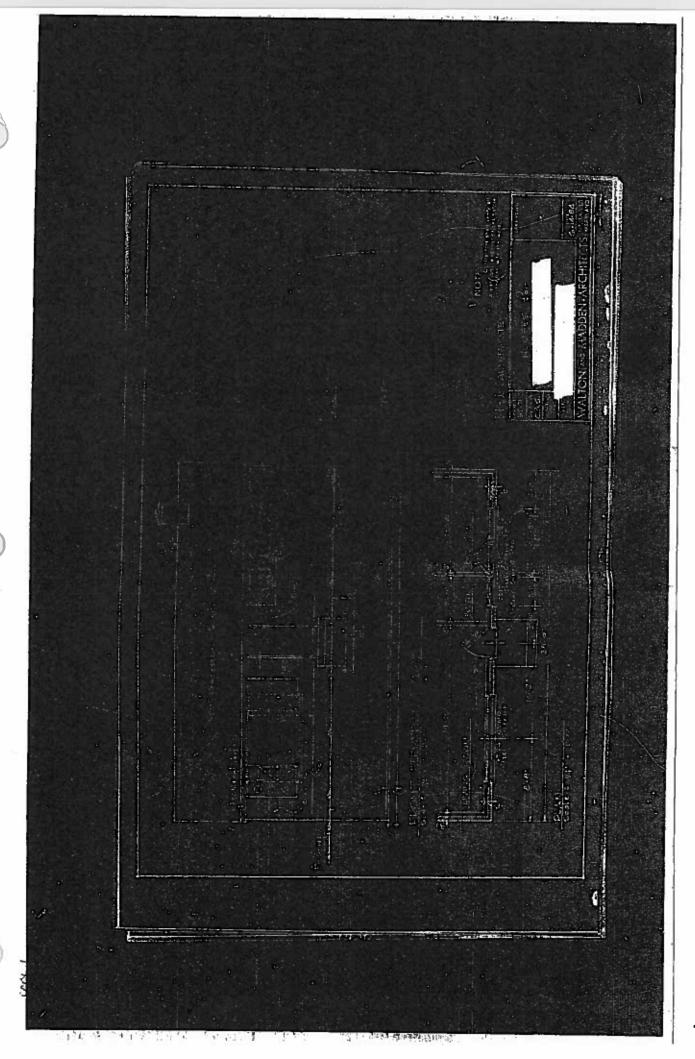


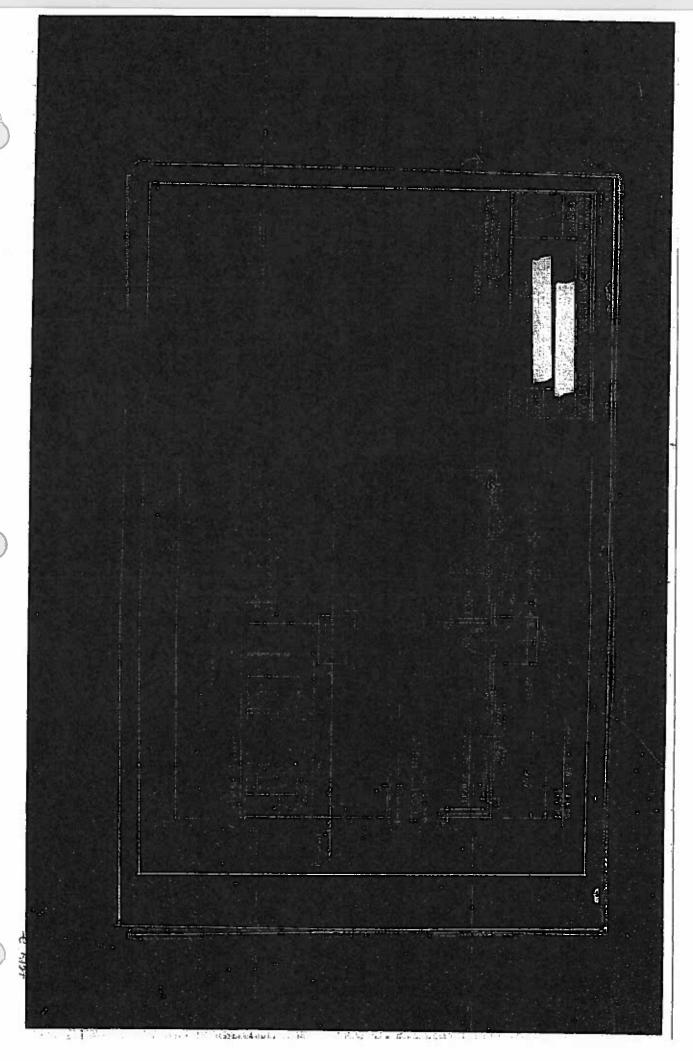


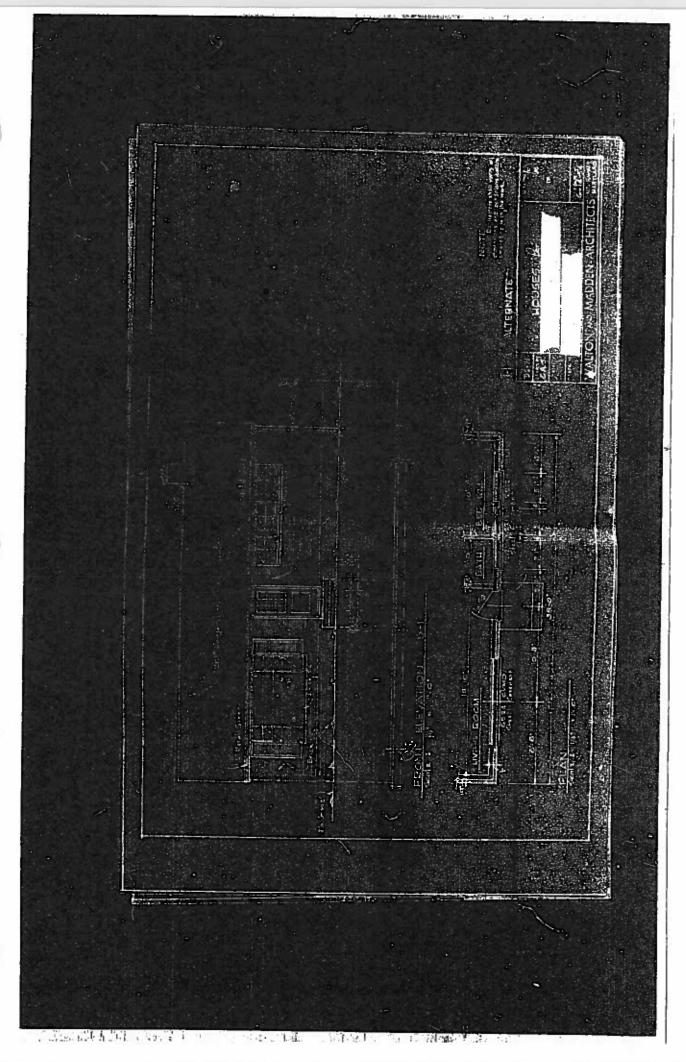














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Save

Homebuyers and homeowners alike may find old multiple listing service profiles for a number of uses and in various ways. Homebuyers may want to look at comparable home sales in the area before writing offers on nearby houses. Homeowners may want to know what a neighboring house sold for to get an idea of their own home's value. Depending on how much property information you have on hand and the amount of



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detailed information you need, a web search will yield the latest information about an old listing. Some websites yield more thorough listing details than others.

# Perform an Online Search

The best way to find a home that was once listed on the MLS is to use a search engine and the old MLS number or the home's address. The MLS number or address, even if it nly includes the house number and street number, should turn up results from various estate websites that promoted the home when it was listed. These websites range from brokerages to real estate databases, such as Redfin, Movato.com, Estately and Homes.com. Such databases pull and store listing information directly from the MLS in the area where the home is located.

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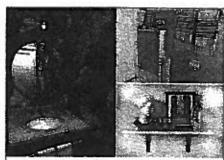
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A Register or Login to see all pictures & details. Why is this required?

Neighborhood Real Estate, LLC. Tonya Tonya

🕅 Joanna Zhao 🕻 301-787-3745

# Tour Nearby Homes

Assigned Schools for 5029 23rd St S, Arlington

Name
Rating

Wakefield High School

Claremont Immersion

6

unston Middle School

7

Go Tour This Home

# Movoto Arlington Agent



I'm happy to give you a quick call to answer all your questions about this home and schedule a tour.

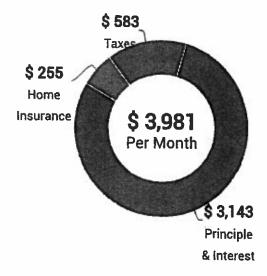
- Email
- Name
- Phone number

# Get In Touch

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# Mortgage Calculator for 5029 23rd Street S, Arlington

Edit the averages shown below to see the payment that works best for you.



Home Price

\$875,000

Go Tour This Home









Code of Virginia
Title 36. Housing
Chapter 6. Uniform Statewide Building Code

# § 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries.



- B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.
- C. Existing buildings and structures.
- Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.
- 2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.
- 3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.
- 4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or

(2012) In the contract of the contract of the contract of the building of the building of the contract of the

structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to § 15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

1972, c. 829; 1974, c. 433; 1977, cc. 423, 613; 1978, c. 578; 1981, c. 498; 1982, c. 267; 1992, c. 73; 1993, c. 328; 1994, cc. 214, 256, 574; 1995, cc. 95, 523, 702, 827; 1999, cc. 333, 341; 2001, c. 119; 2002, c. 720; 2003, c. 650; 2004, c. 851; 2006, c. 424; 2007, c. 291; 2009, cc. 181, 184, 551, 586; 2010, c. 63; 2012, cc. 494, 607; 2014, c. 354.

8/15/2016

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Virginia, Charters, Authorties, Compacts
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Helpful Resources Virginia Code Commission Virginia Register of Regulations U.S. Constitution For Developers
The Virginia Law website data is available via a web service. ○



#### REQUEST FOR INTERPRETATION

Section(s):	2311.7	
Code:	2012 Virginia Statewide Fire Prevention Code	
Phone:	Richmond, VA 23219 Tel: (804) 646-0621 Fax: (804) 646-7465 804 646 0621	
FROM:	William Andrews, Assistant Fire Marshal City of Richmond, Fire Marshal's Office 201 E. Franklin St.	
	VIRGINIA DEPT. OF HOUSING AND COMMUNI Main Street Centre 600 E. Main Street, Suite 300 Richmond, Virginia 23219-1321 Tel: (804) 371-7150 Fax: (804) 371-7092	TY DEVELOPMENT

## QUESTION(S):

Should fire official prevent work on lighter than air vehicle fuel system in buildings without safety features as approved by building code for such hazard?

2311.7 Repair garages for the conversion and repair of vehicles which use CNG, LNG, hydrogen or other lighter-than-air motor fuels shall be in accordance with Section 2311.7 in addition to other requirements in Section 2311. Exception: Repair garages where work is not performed on the fuel system and is limited to exchange of parts and maintenance requiring no open flame or welding.

While Virginia fire officials cannot require building features of ventilation or gas detection system, the fire code should regulate safety of activity involving such hazard inside buildings approved for different risks.

Request technical review board issue opinion supporting fire officials authority to prevent work on lighter than air fuel systems on vehicles inside, unless building has safety features approved by building code for such hazard.

Please see attached supportive information.

+

Supportive information for state technical review board interpretation of Virginia Statewide Fire Prevention code section 2311.7

Most garages built to repair vehicles with heavier than air gasoline and diesel fuels, so flame heaters are high. The 2000 IFC section 2210.1 and current state fire code section 2311.7 required repair garages to comply with this section and the IBC. Repair garages for vehicles that use more than one type of fuel shall comply with the applicable provisions of this section for each type of fuel used.

2311.5: For vehicles powered by gaseous fuels, the fuel shutoff valve shall be closed prior to repairing any portion of the vehicle fuel system. Vehicles powered by gaseous fuels in which the fuel system has been damaged shall be inspected and evaluated for fuel system integrity prior to being brought into the repair garage. The inspection shall include testing of the entire fuel delivery system for leakage.

IFC's commentary notes if leak is detected, the leak must be stopped or the system purged of fuel before the vehicle can be brought into the garage. IFC commentary notes repair garages that install and repair lighter than air motor fuel systems must be equipped with proper ventilation and gas detection systems.

As state plans to edit out most building code parts in the fire code, replacing with generic "maintain in accordance with the applicable building code", recommend state fire code change to forbid working on lighter than air fuel systems inside unless building approved for such by building code. Garages may continue to work on rest of vehicle, but not use open flame or weld when lighter than air fuel vehicle inside; unless comply with building code for such fuel leak hazard.

Similar to fire code section 2311.7, 2015 IBC section 406.8.5 requires repair garages for vehicles fueled by non-odorous gases such as hydrogen or LNG to have gas detection system, which upon activation turns on alarm and ventilation, and turns off heaters.

Welcome contact to discuss; learn when may attend meeting for this on agenda, to discuss if need.